

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,
Plaintiff,

vs.

ERIC ROBERT RUDOLPH,
Defendant.

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CR-00-N-0422-S

U.S. DISTRICT COURT
N.D. OF ALABAMA

**APPENDIX
TO
MOTION TO STRIKE THE DEATH PENALTY**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

U.S. DISTRICT COURT
N.D. OF ALABAMA

SOUTHERN DIVISION

UNITED STATES OF AMERICA

-v-

ERIC ROBERT RUDOLPH

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CR 00-S-0422-S

Superseding

INDICTMENT

COUNT ONE: [18 U.S.C. § 844(i)]

The Grand Jury charges that:

On or about the 29th day of January, 1998, in Jefferson County, within the Northern District of Alabama, the defendant,

ERIC ROBERT RUDOLPH,

did maliciously damage, by means of an explosive, a building and property used in an activity affecting interstate and foreign commerce, namely the New Woman All Women Health Care Clinic located at 1001 17th Street South in Birmingham, Alabama, which prohibited conduct resulted in the death of Robert D. Sanderson and personal injury to Emily Lyons, in violation of Title 18, United States Code, Section 844(i).

COUNT TWO: [18 U.S.C. §§ 924(c)(1)]

The Grand Jury charges that:

On or about the 29th day of January, 1998, in Jefferson County, within the Northern

17

District of Alabama, the defendant,

ERIC ROBERT RUDOLPH,

knowingly used a firearm, that is a destructive device, during and in relation to a crime of violence for which he may be prosecuted in a Court of the United States, that is the damage to a building and property used in an activity affecting interstate and foreign commerce, as described above in Count One, and in the course of such conduct caused the death of Robert D. Sanderson through the use of said firearm, in violation of Title 18, United States Code, Sections 924(c)(1).

NOTICE OF SPECIAL FINDINGS

The allegations of Count One of this Indictment are hereby realleged as if fully set forth herein and incorporated by reference. With regard to Count One of this Indictment, the Grand Jury makes the following special findings:

1. The defendant, ERIC ROBERT RUDOLPH, was 18 years of age or older at the time of the offense. (18 U.S.C. § 3591(a)).

2. The defendant, ERIC ROBERT RUDOLPH,:

- a. intentionally killed the victim. (18 U.S.C. § 3591(a)(2)(A));**
- b. intentionally inflicted serious bodily injury that resulted in the death of the victim. (18 U.S.C. § 3591(a)(2)(B)).**
- c. intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, who died as a direct result of the act. (18 U.S.C. §3591(a)(2)(C)).**
- d. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person and constituted a reckless disregard for**

human life and the victim died as a direct result of the act. (18 U.S.C. §3591(a)(2)(D)).

3. The defendant, ERIC ROBERT RUDOLPH,:

- a. during the commission of an offense under section 844(i), as alleged herein, caused the death of and injuries resulting in the death of a person. [18 U.S.C. §3592(c)(1)].
- b. in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. [18 U.S.C. §3592(c)(5)].
- c. committed the offense in an especially heinous, cruel and depraved manner in that it involved torture or serious physical abuse to the victims. [18 U.S.C. §3592(c)(6)].
- d. committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism. [18 U.S.C. § 3592(c)(9)].
- e. intentionally attempted to kill more than one person in a single criminal episode. [18 U.S.C. §3592(c)(16)].

A TRUE BILL

Martha M. Moore
FOREMAN OF THE GRAND JURY

Alice H. Martin
ALICE H. MARTIN
United States Attorney

Michael W. Whisonant
MICHAEL W. WHISONANT
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

FILED
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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA)
)
 -v-) CR 00-S-422-S
)
 ERIC ROBERT RUDOLPH)

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama and Michael W. Whisonant and Robert Joe McLean, Assistant United States Attorneys, pursuant to Title 18, United States Code, Section 3593(a), and notifies the Court and the Defendant, ERIC ROBERT RUDOLPH, in the above-captioned case that the United States believes the circumstances of the offense charged in Count One of the Superseding Indictment are such that, in the event of the Defendant's conviction, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the United States will seek the sentence of death for this offense: the malicious damage, by means of an explosive, to a building and property used in an activity affecting interstate and foreign commerce, which prohibited conduct resulted in the death of Robert D. Sanderson and personal injury to Emily Lyons, in violation of Title 18, United States Code, Section 844(i), which carries a possible sentence of death.

The Government proposes to prove the following statutory factors pursuant to 18 U.S.C. § 3591(a)(2) and 3592(c) as charged in the Superseding Indictment Notice of Special Findings, hereby incorporated by reference, and non-statutory factors pursuant to 18 U.S.C. § 3593(a)(2), as justifying a sentence of death.

COUNT ONE

**MALICIOUS DAMAGE TO A BUILDING USED IN INTERSTATE COMMERCE BY
MEANS OF AN EXPLOSIVE RESULTING IN DEATH**

A. Statutory Proportionality Factors Enumerated Under 18 U.S.C. §3591(a)(2)(A)-(D).

- 1. Intentional Killing.** The Defendant, ERIC ROBERT RUDOLPH, intentionally killed Robert D. Sanderson (Title 18, U.S.C. §3591(a)(2)(A)).
- 2. Intentional Infliction of Serious Bodily Injury.** The Defendant, ERIC ROBERT RUDOLPH, intentionally inflicted serious bodily injury that resulted in the death of Robert D. Sanderson (Title 18, U.S.C. §3591(a)(2)(B)).
- 3. Intentional Act Contemplating the Taking of the Life of Another or Intending Lethal Force.** The Defendant, ERIC ROBERT RUDOLPH, intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with another person, who died as a direct result of the act (18 U.S.C. §3591(a)(2)(C));
- 4. Intentional Act of Violence in Reckless Disregard for Human Life.** The Defendant, ERIC ROBERT RUDOLPH, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to other persons, such that participation in the act constituted a reckless disregard for human life and Robert D. Sanderson died as a direct result of the act (18 U.S.C. §3591(a)(2)(D)).

B. Statutory Aggravating Factors Enumerated Under Title 18 U.S.C., §3592(c)

1. **Death During the Commission of Another Crime.** The Defendant, ERIC ROBERT RUDOLPH, during the commission of an offense under Title 18, United States Code, Section 844(i), caused the death of and injuries resulting in the death of Robert D. Sanderson (18 U.S.C. §3592(c)(1)).
2. **Grave Risk of Death to Additional Persons.** The Defendant, ERIC ROBERT RUDOLPH, in the commission of the offenses charged in the Superseding Indictment, knowingly created a grave risk of death to Emily Lyons and other persons (18 U.S.C. §3592(c)(5)).
3. **Substantial Planning and Premeditation.** The Defendant, ERIC ROBERT RUDOLPH, committed the offense after substantial planning and premeditation to cause the death of another person and to commit an act of terrorism (18 U.S.C. §3592(c)(9)).
4. **Multiple attempted killings.** The Defendant, ERIC ROBERT RUDOLPH, intentionally attempted to kill more than one person in a single criminal episode (18 U.S.C. §3592(c)(16)).

C. Other, Non-Statutory, Aggravating Factors Identified Under Title 18 U.S.C., §3593(a)(2).

1. **Future Dangerousness of the Defendant.** The Defendant, ERIC ROBERT RUDOLPH, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. In addition to the capital offense charged in Count I of the superceding Indictment and the statutory and non-statutory aggravating factors alleged in this Notice, the Defendant has demonstrated low rehabilitative potential, and/or has demonstrated

lack of remorse.

2. Victim Impact Evidence. The Defendant, ERIC ROBERT RUDOLPH, caused injury, harm and loss to the family of Robert D. Sanderson because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. The murder of Robert D. Sanderson has caused the victim's family extreme emotional suffering, and the victim's family has suffered severe and irreparable harm. The Defendant, ERIC ROBERT RUDOLPH, caused injury, harm and loss to Emily Lyons and her family because of the victim's personal characteristics as an individual human being. The injury of Emily Lyons has caused her and her family extreme emotional suffering, and severe and irreparable harm.

Respectfully submitted,



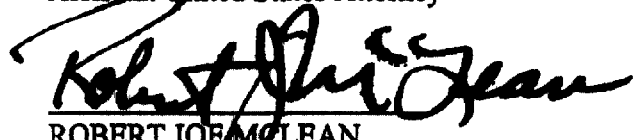
ALICE H. MARTIN

United States Attorney



MICHAEL W. WHISONANT

Assistant United States Attorney




ROBERT JOE MCLEAN

Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that the undersigned Assistant United States Attorney this day caused a copy of the foregoing has been served on the defendant by placing same in the United States mail, postage prepaid, to his attorneys of Record: Mr. Richard Jaffee and Ms. Judy Clark care of Jaffee, Strickland & Drennan, 2320 Arlington Avenue, Birmingham, Alabama 35205 and Mr. William Bowen, White, Dunn & booker, 2025 3rd Avenue North, Suite 600, Birmingham, Alabama 35203.

Done this 11th day of December, 2003.


MICHAEL W. WHISONANT
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

	:	
UNITED STATES OF AMERICA	:	
v.	:	Cr.No. 01-10384-MLW
GARY LEE SAMPSON	:	
	:	

DECLARATION OF KEVIN McNALLY

Kevin McNally hereby declares, under penalties of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. With David Bruck of South Carolina, and Richard Burr of Houston, Texas, I currently serve as Federal Death Penalty Resource Counsel. The purpose of this project, which is funded by the Defender Services Division of the Administrative Office of the United States Courts, is to assist court-appointed and defender attorneys with the defense of federal death-penalty cases at the trial, appellate, post-conviction and clemency stages of such cases. I have served in that capacity since the inception of the Resource Counsel Project in January, 1992. My responsibilities include the monitoring of federal capital prosecutions throughout the United States, in order to ensure the delivery of cost-effective and adequate defense services to indigent capital defendants in such cases.¹ This includes

¹In May 1998, the role of the Federal Death Penalty Resource Counsel Project was described, at pp. 28-30, in a report prepared by a Judicial Conference Subcommittee on

the collection of data on the utilization of the federal death penalty, both as to prosecutions brought under the 1988 so-called “Drug Kingpin” death penalty statute, 21 U.S.C. § 848(e) *et seq.*, and those brought pursuant to the “Federal Death Penalty Act of 1994.” 18 U.S.C. §3591 *et seq.*

2. In order to carry out my responsibilities, I maintain a comprehensive list of all federal death penalty prosecutions and information regarding each defendant. This information is regularly updated, and is checked for accuracy whenever possible against any available United States government information regarding federal capital prosecutions and/or with defense counsel in those cases. The Project’s information regarding practices in federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

3. I have been asked by counsel to Gary L. Sampson to provide information to the Court regarding certain of the data that the Project has collected. I am prepared to testify as a witness as well. The three areas I was asked to provide data concern: (1) the frequency with which the federal death penalty has been sought and imposed since 1988; (2) the existence or not of a “white-defendant effect” in the federal death penalty; and (3), the

Federal Death Penalty Cases. That report (commonly called the Spencer Committee Report) “urge[d] the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project . . . which has become essential to the delivery of high quality, cost-effective representation in death penalty cases” *See*, “Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation,” (May 1998), at p. 50. The Report is available online at <http://www.uscourts.gov/dpenalty/>. The Report’s recommendations were later adopted by the Judicial Conference of the United States.

existence or not of regional variations concerning the frequency with which the federal death penalty is authorized and imposed.

I

FREQUENCY WITH WHICH THE FEDERAL DEATH PENALTY IS SOUGHT AND IMPOSED

4. The Project has collected information regarding all federal executions and all potential and actual federal death penalty prosecutions initiated pursuant to 21 U.S.C. § 848(e) *et seq.*, enacted in 1988, and/or 18 U.S.C. §3591, *et seq.*, enacted in 1994.

5. Based on the Project's figures, as well as the reports published by the Department of Justice in September 2000 and June 2001, it appears that the "pool" of potential capital defendants in the system since 1988 totals 1,784. This figure is current as of March 29, 2003. This consists of 52 cases reviewed prior to the 1995 Death Penalty Protocols put into place by Attorney General Reno,² 682 reviewed by Ms. Reno after the Protocols went into effect, 292 reviewed by Attorney General Ashcroft, and an additional 291 cases identified by United States Attorneys as potential capital cases that were never submitted for review.³ The Project has identified additional cases that fall into this later

²Prior to the Protocols, which went into effect on January 27, 1995, the Attorney General only reviewed cases in which a United States Attorney sought permission to seek the death penalty. The major change wrought by the Protocols was a requirement that *all* potential death-penalty cases, whether or not the United States Attorney wished to pursue the death penalty, be submitted to Main Justice for review and ultimate decision by the Attorney General.

³See the discussion of this figure at n. 10 of the June 2001 Supplemental Justice Department Study.

category, *i.e.*, cases that were never submitted for review and/or charged as capital offenses even though there was justification for doing so.

6. From this group of 1,724 potential capital defendants, a total of 278 defendants were actually authorized for capital prosecution. Thus, the Department of Justice has authorized capital prosecutions in approximately 16% (278/1,724) of the cases in which the penalty could have been sought. To date, juries have sentenced 31 defendants to death. Four death sentences have been set aside on appeal. Three defendants have been executed.⁴ One was granted clemency. There are 23 defendants presently on the federal death row. There are 56 cases presently pending trial.

II

THE REGIONAL EFFECT

7. Based on figures compiled by the Death Penalty Information Center (up to date as of March 27, 2003), the states which currently lead the nation in post-*Gregg* executions are Texas (301), Virginia (87) and Missouri (60). The states whose federal districts have the most authorized federal death penalty prosecutions (including pending cases) are Virginia (34), New York (26), Texas (18) and Missouri (18). Federal districts in the following states have had more than one federal death sentence returned by juries: Texas (7), Missouri (5), Virginia (4), Louisiana (2), Arkansas (2) and North Carolina (2). Of the 31 federal death

⁴Two federal executions took place in the year 2001 (Timothy McVeigh and Juan Garza) and one in the year 2003 (Louis Jones). Messrs. McVeigh and Jones were executed pursuant to the Federal Death Penalty Act of 1994. Mr. Garza was executed pursuant to the 1988 enactment, 21 U.S.C. § 848(e).

sentences imposed by juries since 1988, 25 have come from the traditional “death belt” states. By way of contrast, there have been four federal death-penalty cases tried in New York State involving a total of six defendants as follows: two trials in the Eastern District of New York, one in the Southern District of New York (two capital defendants) and one in the Northern District of New York (two capital defendants). No New York jury has returned a death verdict, including one case, *United States v. bin Laden*, involving simultaneous terrorist bombings of United States embassies in East Africa resulting in hundreds of deaths and thousands of injuries.

III

THE WHITE-VICTIM EFFECT

8. Among the aspects of each federal death penalty prosecution about which the Project collects information is the race of the defendant, the race of the victim, the essential factual allegations of the case, and the positions of the local United States Attorney and the Attorney General of the United States regarding the death penalty. Those figures show that in cases where the victim is white, the chances of the case being authorized for capital prosecution and of the jury returning a sentence of death are significantly higher.

9. The 2000 Department of Justice (DOJ) Survey reported that, of 833 total victims in the cases reviewed, 30% were white. Of authorized defendants, there were 578 victims, 33% of whom were white. Attorney General Reno decided to seek the death penalty in 25% of *intra*-racial homicides and 32% of *inter*-racial homicides. A higher percentage of black defendants who had committed an interracial homicide (30 of 87, or 34%) were authorized for capital prosecution than were black defendants who killed black victims (41

of 200, or 21%). Conversely, a higher percentage of white defendants who killed a white victim were authorized for capital punishment (37 of 90, or 41%), than were white defendants who had committed an interracial homicide (7 of 20, or 35%).

10. Professor David Baldus has pointed out that between January 27, 1995 and July 20, 2000, “Attorney General Reno’s overall approval rate for capital prosecutions was 37% (61/167) in white-victim cases and 21% (81/383) in minority-victim cases – a 16 percentage point difference that is statistically significant at the .001 level.” David Baldus, Memorandum to Sen. Russell D. Feingold (June 11, 2001). (I am advised by Mr. Sampson’s counsel that a copy of this memorandum has been supplied to the Court.) Professor Baldus also points out the following regarding rates at which sentences of death were imposed by juries:

The death sentencing rate from 1995 to 2000 was twice as high in white victim cases as it was in minority victim cases. Nationwide, the rates were .05 (10/198) for the white victim cases versus .02 (10/446) for the minority victim cases. In the eleven states in which death sentences were actually imposed, the rate in the white victim cases was .17 (10/59) versus .08 (10/119) in the minority victim cases – a nine percentage-point difference.⁵

⁵The race-of-victim disparity nationwide is significant at the .06 level while the disparity in the states in which death sentences have been imposed is significant at the .09 level. The states in which death sentences were imposed between 1995 and 2000 are Arkansas, Georgia, Illinois, Kansas, Louisiana, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas and Virginia.

Of particular relevance are the race-of-victim disparities involving black defendants. Nationwide, in black defendant/*white victim* cases, the death sentencing rate was .11 (6/55) while in the black defendant/*minority victim* cases, the rate was .03 (7/253), an 8 percentage-point difference significant at the .01 level. In the eleven death-sentencing states, the death-sentencing rate in the black defendant/*white victim* cases was .24 (6/25) while in the black

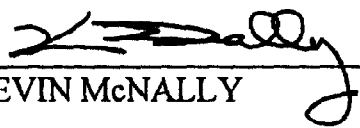
Id.

11. There have been 31 defendants whose original sentence was death. Of those 31 defendants, 48% were convicted of killing white victims (15 of 31). Three of the defendants in white-victim cases had their death sentences vacated, one was again sentenced to death following a new trial, another was granted clemency, two were executed. There are currently 23 defendants on death row. Of those 23 defendants, 48% were convicted of killing white victims (11 of 23).

12. The Project has gathered race-of-victim information on all cases reviewed by the current administration. Attorney General Ashcroft has now reviewed 292 potential federal capital defendants. Of this group, 28% (81/290 – two espionage cases had no identified victims) were accused of killing white victims. However, 34% (23 of 68) of defendants authorized by Attorney General Ashcroft for a capital trial, are accused of killing one or more white victims. By contrast, 26% (58 of 222) of defendants not authorized for a capital trial are accused of killing a white victim. Conversely, 72% (209 of 290) of defendants that DOJ has reviewed under the Ashcroft administration are accused of killing non-white victims. Of those as to whom Attorney General Ashcroft has authorized a capital trial, 66% (45/68) are accused of killing non-white victim(s).

defendant/*minority victim cases*, the rate was .07 (7/95), a 17 percentage-point difference significant at the .02 level.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed
on April 7, 2003.



KEVIN McNALLY

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

Cr.No. 01-10384-MLW

GARY LEE SAMPSON

SUPPLEMENTAL DECLARATION OF KEVIN McNALLY

Kevin McNally hereby declares, under penalties of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I have been asked by Mr. Sampson's counsel to supplement my declaration of April 7, 2003 by providing information on the number of authorized federal death penalty cases, since 1988, by the state in which each such prosecution was brought. According to the Project's records, the following compilation accurately sets forth the particular state in which each of the 278 authorized federal death penalty cases brought since 1988 was prosecuted:

Alabama (4), Alaska (1), Arizona (1), Arkansas (5), California (15), Colorado (6), Connecticut (3), DC (11), Florida (10), Georgia (6), Hawaii (1), Illinois (12), Indiana (1), Iowa (3), Kansas (4), Kentucky (3), Louisiana (6), Maryland (11), Massachusetts (2), Michigan (15), Mississippi (3), Missouri (18), New Jersey (2), New Mexico (6), New York (26), North Carolina (8), Oklahoma (3), Pennsylvania (10), Puerto Rico (13), Tennessee (12), Texas (18), Vermont (2), Virginia (34), West Virginia (3).

I declare, under penalty of perjury, that the foregoing is true and correct. Executed

on April 9, 2003.



KEVIN McNALLY

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DEATH PENALTY INFORMATION CENTER

Facts About the Death Penalty

February 18, 2004

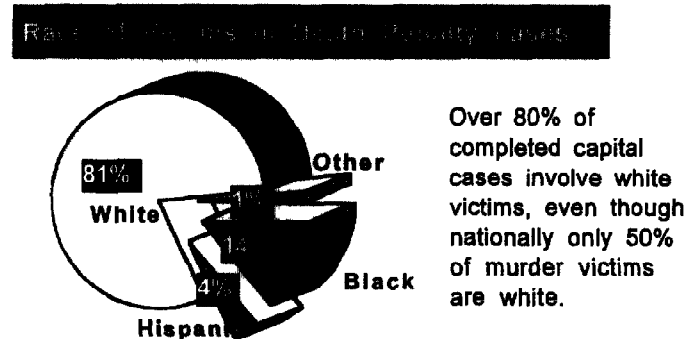
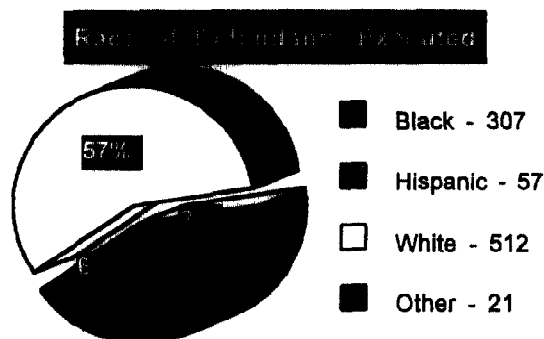
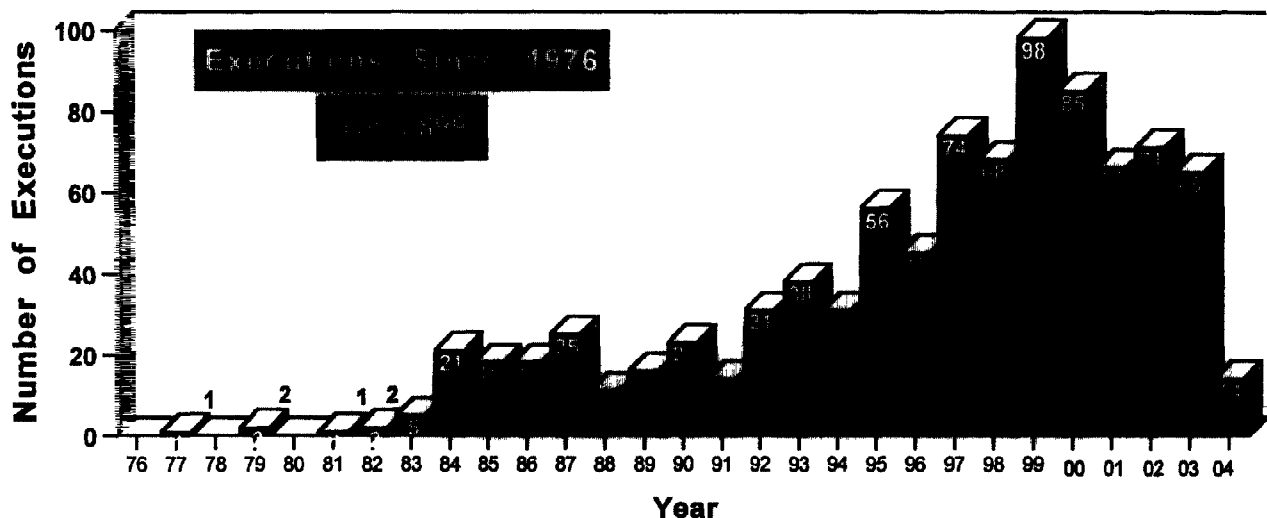
STATES WITH THE DEATH PENALTY (38)

Alabama	Florida	Louisiana	N. Hampshire*	Oregon	Virginia
Arizona	Georgia	Maryland	New Jersey*	Pennsylvania	Washington
Arkansas	Idaho	Mississippi	New Mexico	S. Carolina	Wyoming
California	Illinois	Missouri	New York*	S. Dakota*	
Colorado	Indiana	Montana	N. Carolina	Tennessee	-plus
Connecticut*	Kansas*	Nebraska	Ohio	Texas	U.S. Gov't
Delaware	Kentucky	Nevada	Oklahoma	Utah	U.S. Military*

*Indicates jurisdictions with no executions since 1976.

STATES WITHOUT THE DEATH PENALTY (12)

Alaska	Maine	Minnesota	Vermont	
Hawaii	Mass.	N. Dakota	W. Virginia	-plus
Iowa	Michigan	Rhode Island	Wisconsin	District of Columbia



Recent Studies on Race

• In **96% of the states** where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both.

-Prof. David Baldus report to the ABA, 1998

• **98% of the chief district attorneys in death penalty states are white; only 1% are black.**

-Prof. Jeffrey Pokorak (Cornell Law Review, 1998)

• A sophisticated statistical study in Philadelphia found that for similar crimes committed by similar defendants, **blacks received the death penalty at a 38% higher rate than all others.**

-“The Death Penalty in Black & White” - DPIC, 1998

• A comprehensive study on the death penalty in North Carolina found that **the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white.**

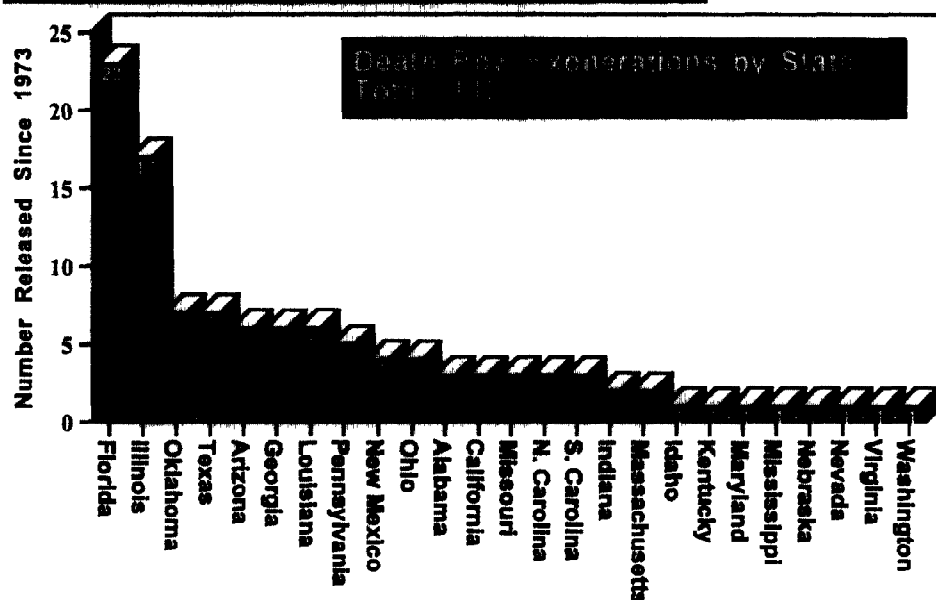
- Prof. Jack Boger and Dr. Isaac Unah (University of North Carolina, 2001)

Death Penalty Information Center 2

Persons Executed for Interracial Murders

White Def./ Black Victim	12
Black Def./ White Victim	187

Innocent Inmates on the Death Penalty



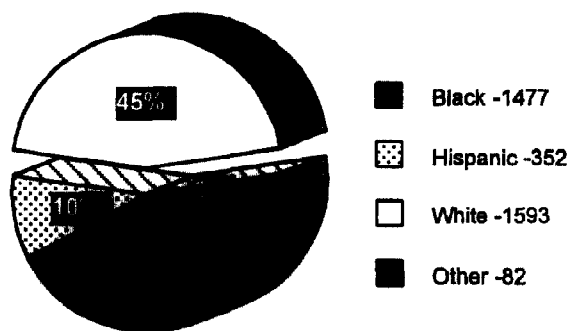
• Since 1973, over 100 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, Oct. 1993, with updates from DPIC).

• Innocent inmates spent about 9 years incarcerated prior to release.

• In 2000, 8 inmates were freed from death row and exonerated; from 2001 - 2002, another 9 were freed; and in 2003, 10 have been exonerated.

States Where Inmates Have Been Released

Race of Death Row inmates



TOTAL: 3,504*

DEATH ROW INMATES BY STATE*

California	632	S. Carolina	74	Washington	11
Texas	451	Mississippi	69	Utah	11
Florida	381	Missouri	67	Illinois	8
Penn.	241	Arkansas	40	Connecticut	7
Ohio	209	Indiana	39	Kansas	7
N. Carolina	207	Kentucky	38	U.S. Military	7
Alabama	194	Oregon	31	Nebraska	7
Arizona	126	Virginia	27	Colorado	6
Georgia	116	U.S. Govt.	28	New York	6
Oklahoma	105	Idaho	21	Montana	5
Tennessee	104	Delaware	21	S. Dakota	4
Louisiana	92	New Jersey	15	New Mexico	2
Nevada	89	Maryland	14	Wyoming	1

Source: NAACP LDF Death Row, U.S.A. (10/1/03) (includes cases with temporary reversals)

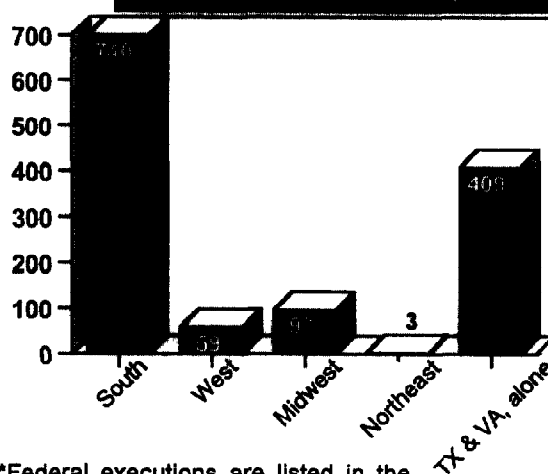
*When added, state totals are slightly higher because some inmates are sentenced in more than one state.

NUMBER OF EXECUTIONS BY STATE SINCE 1976

	Total	2003	2004		Total	2003	2004
Texas	320	24	7	Ohio	10	3	2
Virginia	89	2		Nevada	9		
Oklahoma	71	14	2	Mississippi	6		
Missouri	61	2		Utah	6		
Florida	58	3	1	Washington	4		
Georgia	34	3		Maryland	3		
N Carolina	31	7	1	Nebraska	3		
S Carolina	28			Pennsylvania	3		
Alabama	28	3		Kentucky	2		
Louisiana	27			Montana	2		
Arkansas	26	1	1	Oregon	2		
Arizona	22			Colorado	1		
Delaware	13			Idaho	1		
Illinois	12			New Mexico	1		
Indiana	11	2		Tennessee	1		
California	10			Wyoming	1		
				US Government	3	1	

Death Penalty Information Center 3

Executions By Region



*Federal executions are listed in the region in which the crime was committed

WOMEN AND THE DEATH PENALTY

- There were 49 women on death row as of October 1, 2003. This constitutes 1.4% of the total death row population. (NAACP LDF *Death Row, U.S.A.*)
- 10 women have been executed since 1976

JUVENILES AND THE DEATH PENALTY

- There were 73 death row inmates (all male) sentenced as juveniles, (under 18 at time of crime) as of December 1, 2003. They make up 2% of the total death row; 38% of these are in Texas. (Victor Streib, *The Juvenile Death Penalty Today*)
- 23 men have been executed for crimes committed as juveniles since 1976.
- Seventeen states plus the federal government have an age minimum of at least 18 for capital punishment: CA, CO, CT, IL, IN, KS, MD, MO, MT, NE, NJ, NM, NY, OH, OR, TN, WA, and U.S. Five states place the minimum death penalty age at 17: FL, GA, NH, NC, and TX. (Note: Florida's minimum age may have been lowered to 16 by a 2002 referendum).
- A May 2002 Gallup Poll found that a majority of Americans (69%) oppose executing those who are juveniles at the time of their crime.

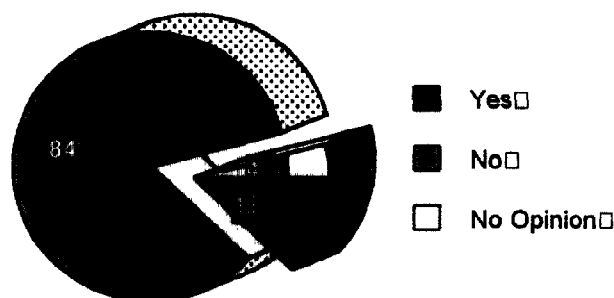
MENTAL RETARDATION AND THE DEATH PENALTY

- On June 20, 2002, the Supreme Court issued a landmark ruling ending the execution of those with mental retardation. In *Atkins v. Virginia*, the Court held that it is a violation of the ban on cruel and unusual punishment to execute death row inmates who have mental retardation. Prior to the ruling, eighteen states, plus the federal government prohibited such executions: AZ, AR, CO, CT, FL, GA, IN, KS, KY, MD, MO, NM, NE, NY, NC, SD, TN, WA, and U.S.

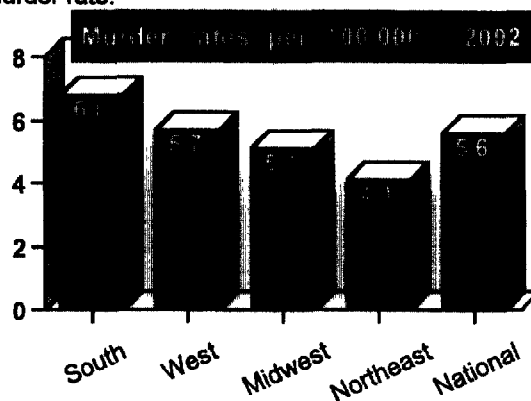
DETERRENCE AND THE DEATH PENALTY

- According to a survey of the former and present presidents of the country's top academic criminological societies, 84% of these experts rejected the notion that the death penalty acts as a deterrent to murder. (Radelet & Akers, 1996)

Criminologists' View of Deterrence



- Consistent with previous years, the 2002 FBI Uniform Crime Report shows that the South repeatedly has the highest murder rate. The South accounts for over 80% of executions. The Northeast, which has less than 1% of all executions in the U.S., again had the lowest murder rate.



EXECUTIONS SINCE 1976 BY METHOD USED*

*some states authorize more than one method

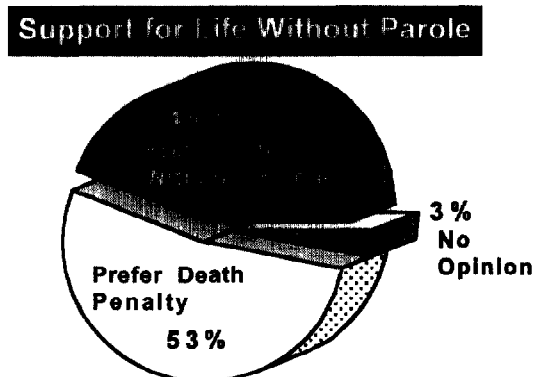
732	Lethal Injection	(37 states, plus the U.S. Government and Military)
151	Electrocution	(8 states; sole method in 1 state (Nebraska))
11	Gas Chamber	(5 states; all have lethal injection as an alternative method)
3	Hanging	(2 states; all have lethal injection as an alternative method)
2	Firing Squad	(3 states; all have lethal injection as an alternative method)

FINANCIAL FACTS ABOUT THE DEATH PENALTY

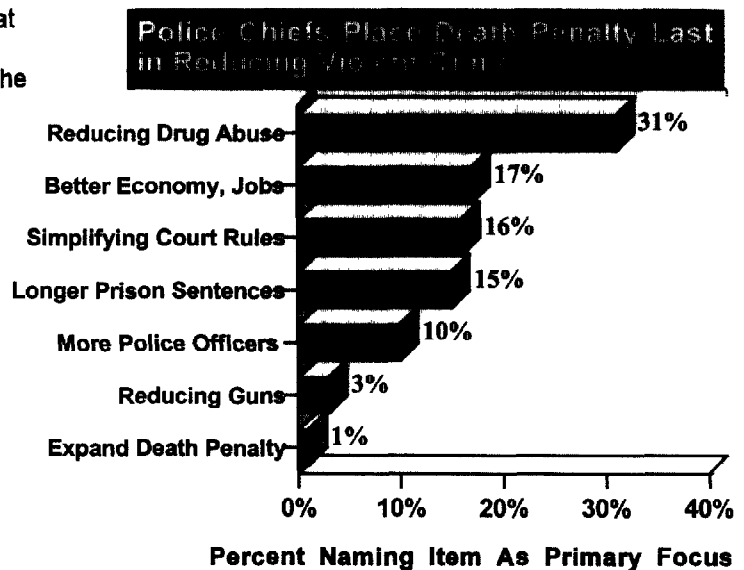
- A study by Indiana's Criminal Law Study Commission found that the total costs of the death penalty exceed the complete costs of life without parole sentences by about 38%, assuming that 20% of death sentences are overturned and resentenced to life. (Indiana Criminal Law Study Commission, January 10, 2002)
- The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of a non-death penalty murder case with a sentence of imprisonment for life. The majority of those costs occur at the trial level. (Duke University, May, 1993).
- Enforcing the death penalty costs Florida \$51 million a year above and beyond what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida has carried out since 1976, that amounts to a cost of \$24 million for each execution. (Palm Beach Post, January 4, 2000)
- In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).
- The death penalty costs California \$90 million annually beyond the ordinary costs of the justice system-\$78 million of that total is incurred at the trial level. (Sacramento Bee, March 28, 1988).

PUBLIC OPINION AND THE DEATH PENALTY

- The October 2003 Gallup Poll found that overall support of the death penalty had dropped to its lowest level in 25 years: 64% supported the death penalty and 32% opposed. Another Gallup Poll (May 2003) revealed that when respondents are given the choice of life without parole as an alternate sentencing option, support for the death penalty is at 53%.



- A 1995 Hart Research Poll of police chiefs in the U.S. found that the majority of the chiefs do not believe that the death penalty is an effective law enforcement tool.



The Death Penalty Information Center has available more extensive reports on a variety of issues, including:

- "The Death Penalty in 2003: Year End Report: Doubts Continue As Death Penalty Numbers Decline in 2003"
- "International Perspectives on the Death Penalty: A Costly Isolation for the U.S." (1999)
- "The Death Penalty in Black & White: Who Lives, Who Dies, Who Decides" (1998)
- "Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent" (1997)
- "Killing for Votes: The Dangers of Politicizing the Death Penalty Process" (1996)
- "Twenty Years of Capital Punishment: A Re-evaluation" (1996)
- "With Justice for Few: The Growing Crisis in Death Penalty Representation" (1995)
- "On the Front Line: Law Enforcement Views on the Death Penalty" (1995)
- "The Future of the Death Penalty in the United States: A Texas-Sized Crisis" (1994)
- "Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty" (updated 1994)

June 11, 2001

To: The Honorable Russell D. Feingold, Committee on the Judiciary, U. S. Senate, 716 Hart Senate Office Building, Washington D.C. 20510-4904

From: David C. Baldus, Joseph B. Tye Distinguished Professor of Law, College of Law, University of Iowa

Re: DOJ report on the Federal Death Penalty System (June 6, 2001)

I have read U.S. Department of Justice, The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review (June 6, 2001) ("the report"), which supplements the DOJ report of September 12, 2000. The following comments explain why in the face of the findings and data in the DOJ September 2000 report, the latest DOJ report utterly fails to convince me that there is no significant risk of racial unfairness and geographic arbitrariness in the administration of the federal death penalty. I believe there is still the just as much reason to be concerned about these issues as there was when the September 2000 report was issued.

1. The report completely overlooks the evidence of race-of-victim discrimination documented in the September 12, 2000 report.

A main theme of the latest report (p. 10) is that the death penalty authorization rate is higher for whites (.38) than it is for blacks (.25) and Hispanics (.20). These are the same figures that appeared in the September 2000 report. The latest report's emphasis on these statistics appears to suggest that white defendants are actually treated more punitively than minority defendants.

A more plausible explanation for the higher authorization rates for the white defendants is plainly documented in the September report – (1) white defendants are more likely to have killed whites¹ and (2) the U.S. Attorney charging and DOJ authorization rates are much higher in white-victim cases than they are in minority-victim cases. For example, data in the September 2000

¹ For the cases for which both race-of-defendant and race-of-victim data are available, 92% (109/119) of the white

report indicate that the Attorney General (AG) authorization rate for capital prosecutions is .37 (61/167) in white-victim cases and .21 (81/383) in minority-victim cases – a 16 percentage point difference that is statistically significant at the .001 level. The more punitive treatment of *white-victim cases* is a plausible alternative explanation for the higher authorization rates in *white-defendant cases* that the new DOJ report does not even recognize, let alone dispel.

The September 2000 report also documents race-of-victim disparities in the actual imposition of death sentences in the federal system. Among all death-eligible offenders, those data indicate that the death-sentencing rate from 1995 to 2000 is twice as high in white victim cases as it is in minority victim cases. Nationwide, the rates are .05 (10/198) for the white-victim cases versus .02 (10/446) for the minority-victim cases; in the eleven states in which death sentences were actually imposed, the rate in the white-victim cases was .17 (10/59) versus .08 (10/119) in the minority-victim cases – a nine percentage-point difference.²

These are the same kinds of race-of-victim disparities documented in *McCleskey v. Kemp*³. The latest report simply ignores the data on race-of-victim disparities in the charging and authorization process, *and* in the actual imposition of federal death sentences.

defendant cases involved a white victim.

² The race-of-victim disparity nationwide is significant at the .06 level while the disparity in the states in which death sentences have been imposed is significant at the .09 level. The states in which death sentences were imposed between 1995 and 2000 are Arkansas, Georgia, Illinois, Kansas, Louisiana, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas, and Virginia.

Of particular relevance are the race-of-victim disparities in case involving black defendants. Nationwide, in black defendant/*white victim* cases, the death-sentencing rate was .11 (6/55) while in the black defendant/*minority victim* cases, the rate was .03 (7/253), an 8 percentage-point difference significant at the .01 level. In the eleven death-sentencing states, the death-sentencing rate in the black defendant/*white victim* cases was .24 (6/25) while in the black defendant/*minority victim* cases, the rate was .07 (7/95), a 17 percentage-point difference significant at the .02 level.

³ 481 U.S. 279 (1987).

2. The report confounds the issue of "regional disparities" in the administration of the federal death penalty with the issue of racial disparities in the distribution of death eligible cases.

The report argues that we should not expect the proportions of black, white, and Hispanic offenders among death-eligible cases that are *accepted* for federal prosecution to correspond to "the racial and ethnic proportions in the general population." (p.13) Perhaps, but that is not the question. The real issue in this regard is the racial composition of the pool of death-eligible cases that are *not accepted* for federal prosecution. The report offers no data on that question. As a result, we do not know to what extent the death-eligible cases that were prosecuted in federal court are representative of all homicides that could have been charged as federal capital crimes, in the districts that are discussed in the report (pp.14-18) and in the country as a whole.

More importantly, the report seeks to equate its arguments concerning geographic disparities in the *racial distribution of death-eligible cases* with an explanation for clearly documented geographic and regional disparities in the *administration of the death penalty*. (Pp. 17-18) This is extremely misleading. The patterns that need to be studied are differences between regions in the rates at which death sentences are (a) *sought* by United State's Attorneys, (b) *approved* by the Attorney General, and (c) *imposed* by juries.

The September 2000 report clearly shows that in practice the federal death sentencing system is largely a Southern program. Twelve of the 19 men on federal death row as of September were sentenced in the South, including 6 from Texas and 4 from Virginia. The new report focuses on *regional differences* in the *racial composition of the pools* of potential capital cases that the districts have generated (p. 17). This has nothing to do with regional disparities in the rates at which death eligible defendants in the system are capitally charged and sentenced to death.

3. The report presents no data or other compelling reasons to dispel concerns about the exercise of discretion by U.S. Attorneys in the post-authorization stage of the process.

One the most striking findings of the September 2000 report is that in the period after the AG has approved a capital prosecution, 48% of white defendants avoid the risk of a death penalty by entering a plea agreement to a non-capital charge, while the rates that blacks and Hispanics enter such agreements are 25% and 28% respectively. (p.19) The department is obviously concerned about this issue because it plans to limit the power of U.S. Attorneys to enter such agreements without AG approval. (p. 22)

The report seeks to dispel concerns created by these data by pointing out first that it "takes two to make a plea agreement" and the data do not reflect racial differences in the rates at which the government offered post-authorization plea agreements. This argument raises an empirical question about the 62 cases (as of the September 2000 report) in which a post-authorization plea agreement was *not* reached. Was a plea bargain offered by the prosecution in these cases and rejected by the defense, or was none offered? It would have been easy for the DOJ to ask its own prosecutors whether they offered plea agreements in these cases. Apparently, it was not done.

The report further argues that even if differential acceptance rates by white and minority defendants did not explain the race disparities in the post-authorization guilty pleas, the September 2000 report's findings on this issue "would not be suggestive of bias by the U.S. Attorney's offices." (p. 20) The argument is that the detection of discrimination by U.S. Attorneys must rest on an analysis of "what happens in the process as a whole" and that decisions taken "at the final plea stage are uninformative as possible indications of bias by the U.S. Attorney offices." (p.20) Certainly it is important to view the system as a whole, but prior research demonstrates that race disparities may operate at discrete stages in a decision making process that overall appears to be evenhanded. There is serious cause for worry here, and the report makes no attempt to address it.'

'The report's argument also overlooks the fact that many of the post-authorization plea agreements are made in cases in which the U.S. Attorney's initial recommendation to waive the death penalty was overruled by the AG, a circumstance that needs to be factored into any analysis of the post-authorization decisions.

The claim that no differential treatment exists in the post-authorization plea stage is a mere assertion with no evidence whatever to support it. Without data on the comparative culpability of the offenders (and the race of the victims) in the cases affected by these post-authorization pleas bargaining decisions, one has no idea the extent to which similarly situated defendants were in fact treated comparably.

4. The report provides no compelling reason for the DOJ's failure to authorize a comprehensive state of the art study of fairness in the administration of the federal death penalty system.

The report notes a meeting of "researchers and practitioners on January 10, 2001" in Washington D.C. to consider the feasibility of conducting a comprehensive empirical study and evaluation of fairness in the administration of the federal system. (p.11) I was one of the researchers at that meeting.

The report correctly states that there was general agreement at the January meeting that the conduct of such a study would entail a "multi-year research initiative." Two years would be the likely time line. In the meantime, half a year has passed since that meeting, and nine months since the release of the initial report, and neither the NIJ nor any other agency of the Department of Justice has taken any visible step to begin to make such a study possible. Quite the opposite. Attorney General Ashcroft's testimony last week suggested that he believes that the idea should be abandoned.

The report also states that "discussion" at the January 10 meeting "indicated," that such a study "could not be expected to yield definitive answers concerning the reasons for disparities in federal death penalty cases." This was certainly not the consensus of the researchers at the January 10 meeting. On the contrary, the consensus was that such a study would provide the best possible evidence on the question. Certainly the results of such a study would yield far more definitive answers to the issue of racial fairness in the system than the arguments presented in the department's latest report.

The new report offers no reason at all why such a study should not be conducted even if it would require up to two years to complete. It also offers no reason why the DOJ appears unwilling to identify by defendant name and docket number the more than 700 death-eligible cases that make up the database for its latest study. With this information independent researchers could collect data on the cases in the DOJ database and conduct the kind of study that would provide the best evidence available on the question of fairness in the federal death sentencing system.

5. The report misconceives the nature of race discrimination in the administration of the federal death penalty.

A main theme of the report is that the core issue of racial fairness is whether U.S. Attorneys are consciously engaged in "favoritism towards White defendants." (p. 11) In other words, are their decisions based on "invidious" racial reasons (p.12) or motivated by "bias" (p. 20) or a "particular desire to secure the death penalty for minority defendants." (p. 17) This states the issue far too crudely. No one with an understanding of the system suggests that it is driven by such a conscious and blatant animus against minority defendants or defendants whose victims are white.

The concern about racial unfairness in the system is whether defendants with similar levels of criminal culpability and deathworthiness are treated comparably or differently because of their race or the race of their victims. The reasons for differential treatment by U.S. Attorneys - and by agents of the FBI, the DEA and other are federal law enforcement agencies - are almost certainly nonconscious. More importantly, the reasons for the differential treatment of similarly situated offenders on the basis of their race or the race of the victim are irrelevant. It is the fact that differential treatment cannot be explained by legitimate case characteristics that makes it morally and legally objectionable, when it exists. Without a systematic study based on full information concerning the criminal culpability and the race of the victims of all of the death eligible offenders,

we will remain in the dark about whether unexplained differential treatment based on the race of the defendant and victim exists in the federal death penalty system, and if so, what causes it.

FEDERAL CAPITAL PROSECUTIONS AWAITING OR IN TRIAL

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
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Ferebee, Donald	D. MD CR No. 96-96-2273	B
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a Baltimore drug dealer alleged to have arranged for the contract killing of a police informant who had implicated him in a prior drug-related murder. A female bystander was also killed accidentally during the shooting. The death penalty was authorized only for the murder of the witness/informant. The actual gunman is co-operating with the government and does not face the death penalty for either of the killings. The government also declined to seek the death penalty against the other perpetrator present at the scene of the killing. All defendants and both victims are African-American. Attorney General Reno authorized the death penalty against Ferebe in April, 1998, and the trial was postponed pending Ferebe's appeal since he is already serving a federal life-without-parole sentence for the initial murder. Attorney General Ashcroft rejected a plea agreement involving a life sentence.

Gonzales-Lauzan, Luis	S.D. FL CR No. 02-CR-20572-ALL	H
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a murder-for-hire/informant killing case. Gonzales-Lauzan is charged with having arranged the murder of a government witness in a federal firearms case against his father. 18 U.S.C. §§ 924(j), 1111, 1512 and 1513. He allegedly provided a gun and a silencer and waited in another car nearby. Wiggins, the triggerman, allegedly shot the victim at his home in order to work off a drug debt to Gonzales-Lauzan. Hernandez is charged with having helped set up the shooting. Wiggins entered into a plea agreement to testify against Gonzales-Lauzan, who will face the death penalty. All involved are Cuban-Americans.

Green, Roy	C.D. CA CR No. 98-337-CBM	B
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a prison murder at Lompoc FCI in California. Green, 40, an African-American, was indicted for the stabbing death of a 29-year-old white correctional officer in 1997. He is also charged with using the knife to assault four other officers who were wounded in the attack. Green was serving a 20-year sentence for drug possession in a Missouri case when he was sentenced to serve additional time for assaulting two officers at a Wisconsin prison. Green has convictions dating back to the 1970's for attempted murder, robbery, burglary and assaulting a police officer with a deadly weapon. He was found incompetent for a period of time.

Peoples, Cornelius	W.D. MO CR No. 00 CR 395-ALL	B
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the murder of a federal government witness. Peoples, 24, conspired with co-defendant Lightfoot to prevent the victim from testifying at Lightfoot's federal trial on charges of bank robbery. Lightfoot contracted the killing of his roommate for becoming a government witness. The victim, 33, was found dead of multiple gunshot wounds in his home in Kansas City. He contacted government witness, Anthony Hunter, who contacted Barfield who hired Haskell, the triggerman. Barfield did not face the death penalty and was acquitted. Haskell was sentenced to life in prison. All defendants are black. The victim is white. After Lightfoot was sentenced to life in prison, the government withdrew its request for the death penalty for Peoples. The Eighth Circuit reversed the convictions and the government is again seeking the death penalty. 250 F.3d 360 (2001). An appeal is pending.

Lightfoot, Xavier Lamar	W.D. MO CR No. 00 CR 395-ALL	B
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the murder of a federal witness. Co-defendant Peoples, 24, conspired with Lightfoot to prevent the victim from testifying at Lightfoot's federal trial on charges of bank robbery. The victim, 33, was Lightfoot's roommate and was found dead of multiple gunshot wounds in their rental home in Kansas City. Peoples supposedly acted as a go-between (along with co-defendant Barfield) with the professional hit man (Haskell) who committed the murder which Lightfoot arranged from federal prison. Murder for hire is alleged as an aggravating circumstance. All defendants are black. The victim is white. After Lightfoot was sentenced to life in prison, the government withdrew its request for the death penalty for Peoples. The Eighth Circuit reversed the convictions and the government is again seeking the death penalty. 250 F.3d 360 (2001). An appeal is pending.

Shakir, Jamal	M.D. TN CR No. 3:98-00038 (NIXON)	B
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a gang called the "Rollin" 90s Crips or Bangside 90s faction out of Los Angeles which allegedly moved 150 kilos of crack to Las Vegas. From there sales operations were allegedly set up in Oklahoma City and Nashville. The group has also been called the "Shakir Enterprise." A Crips gang member and his wife were killed in Oklahoma City, and their 3 year old daughter, who was also shot, stayed with her dead parents and slept with them at night for several days. Richard Chambers, 59, was shot to death in Cheatham County, Tennessee. There may have been up to 13 killings in three states. Three victims were themselves charged with murder in the indictment. The indictment charges Shakir, 25, with six killings from 1995-97, Payne, 20, with participating in two killings and in the shooting of the gang associate's 3-year-old-girl, and Young, 24, with helping kill one person and assaulting and torturing two others. Four of the killings were said to be to silence potential witnesses, other slayings were allegedly motivated by revenge. Murder for hire is alleged as an aggravating circumstance.

McIntosh, Richard	S.D. IL CR No. 99-40044	W
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three inmates at Marion alleged to be members of the Aryan Brotherhood. They are white and the victim black. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claims the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia.

Defendant Name	D Ct Docket #	Race
Knorr, Carl	S.D. IL CR No. 99-40044	W
three inmates at Marion alleged to be members of the Aryan Brotherhood. They are white and the victim black. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claims the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia.		
Payne, Eben	M.D. TN CR No. 3:98-00038 (NIXON)	B
a gang called the "Rollin" 90s Crips or Bangside 90s faction out of Los Angeles which allegedly moved 150 kilos of crack to Las Vegas. From there sales operations were allegedly set up in Oklahoma City and Nashville. The group has also been called the "Shakir Enterprise." A Crips gang member and his wife were killed in Oklahoma City, and their 3 year old daughter, who was also shot, stayed with her dead parents and slept with them at night for several days. Richard Chambers, 59, was shot to death in Cheatham County, Tennessee. There may have been up to 13 killings in three states. Three victims were themselves charged with murder in the indictment. The indictment charges Shakir, 25, with six killings from 1995-97, Payne, 20, with participating in two killings and in the shooting of the gang associate's 3-year-old-girl, and Young, 24, with helping kill one person and assaulting and torturing two others. Four of the killings were said to be to silence potential witnesses, other slayings were allegedly motivated by revenge. Murder for hire is alleged as an aggravating circumstance.		
Young, Donnell	M.D. TN CR No. 3:98-00038 (NIXON)	B
a gang called the "Rollin" 90s Crips or Bangside 90s faction out of Los Angeles which allegedly moved 150 kilos of crack to Las Vegas. From there sales operations were allegedly set up in Oklahoma City and Nashville. The group has also been called the "Shakir Enterprise." A Crips gang member and his wife were killed in Oklahoma City, and their 3 year old daughter, who was also shot, stayed with her dead parents and slept with them at night for several days. Richard Chambers, 59, was shot to death in Cheatham County, Tennessee. There may have been up to 13 killings in three states. Three victims were themselves charged with murder in the indictment. The indictment charges Shakir, 25, with six killings from 1995-97, Payne, 20, with participating in two killings and in the shooting of the gang associate's 3-year-old-girl, and Young, 24, with helping kill one person and assaulting and torturing two others. Four of the killings were said to be to silence potential witnesses, other slayings were allegedly motivated by revenge. Murder for hire is alleged as an aggravating circumstance.		
Hyles, Tyrese	E.D. MO CR No. 01-CR-73-ALL	B
a witness killing §1512 murder for hire involving interstate travel from Tennessee to Missouri. Hyles faced state drug charges. The victim was murdered after his preliminary hearing testimony. Cannon allegedly murdered the victim by shooting him in his bed. The Attorney General required a capital prosecution.		
Garcia, Rico	N.D. CA CR No. 00-CR-20018-ALL	H
involves multiple (five) Nuestra Familia murders including the 1998 RICO murder of another gang member in a war for control of the "Salinas regiment" of the Neustra Familia, a Latino prison gang. Garcia, 35, is charged as the triggerman in this killing. Two others were allegedly with him. This is another "Petite Policy" case as Garcia was originally charged in state court and plead to other charges for a 22 year sentence in exchange for the state dropping the homicide. The prosecution involves shootings, assaults, robberies and drug dealing. Ramirez is charged in two killings, Garcia was charged in three, now two, and the other defendants one each. The Attorney General required a capital prosecution for Garcia. All involved are Hispanic.		
Quinones, Alan	S.D. NY CR No. 00 CR 0761 (JSR)	H
murder of a New York Police Department informant, who was allegedly beaten or tortured. The victim, a drug dealer, had recently arranged two controlled buys from Quinones. Quinones is alleged to be the boss. Co-defendant Rodriguez allegedly participated in the killing. The victim's body was burned post-mortem. Murder for hire is alleged as an aggravating circumstance. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution. A district court decision that the death penalty was unconstitutional due to the execution of innocents was reversed on appeal. United States v. Quinones, 313 F.3d 49 (2nd Cir. 2002). All involved are Hispanic.		
Rodriguez, Diego	S.D. NY CR No. 00 CR 0761 (JSR)	H
murder of a New York Police Department informant, who was allegedly beaten or tortured. The victim, a drug dealer, had recently arranged two controlled buys from co-defendant Quinones. Quinones is alleged to be the boss. Rodriguez allegedly participated in the killing. The victim's body was burned post-mortem. Murder for hire is alleged as an aggravating circumstance. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution. A district court decision that the death penalty was unconstitutional due to the execution of innocents was reversed on appeal. United States v. Quinones, 313 F.3d 49 (2nd Cir. 2002). All involved are Hispanic.		
Johnson, Angela	N.D. IA CR No. 00 CR 3034 MWB	W
five murders in 1993 of a potential witness, his girlfriend and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, who disappeared in November of 1993. All involved are white.		
Honken, Dustin	N.D. IA CR No. 00 CR 3034 MWB	W
five murders in 1993 of a potential witness, his girlfriend and two daughters, in a drug conspiracy case. The fifth victim is Angela Johnson's former boyfriend, who disappeared in November of 1993. All involved are white.		

Defendant Name	D Ct Docket #	Race
Williams, Michael	S.D. NY CR No. 00-CR-1008	B
involves a multiple murder during a narcotics conspiracy. Three black men were killed in 1996. The defendants are also black. The Attorney General required a capital prosecution.		
Williams, Xavier	S.D. NY CR No. 00-CR-1008	B
involves a multiple murder during a narcotics conspiracy. Three black men were killed in 1996. The defendants are also black. The Attorney General required a capital prosecution.		
Williams, Elijah Bobby	S.D. NY CR No. 00-CR-1008	B
involves a multiple murder during a narcotics conspiracy. Three black men were killed in 1996. The defendants are also black. The Attorney General required a capital prosecution.		
Fell, Donald	D. VT 00-M-66-ALL	W
multiple (three) murders, a carjacking and an interstate kidnapping. The defendants were with Fell's mother and a male friend when an argument erupted. The victim's throat was slashed by Fell and Fell's mother stabbed to death by Lee, the co-defendant. The two then carjacked a middle-aged woman at a supermarket. Crossing into New York, they told her to get out and she attempted to run into the woods. They followed her and allegedly killed her by kicking her. The defendants both made incriminating statements. All involved are Caucasian. Lee died in jail from asphyxiation, ruled an accident, but probably a suicide. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution, stipulating life in prison. The Attorney General also rejected a bench trial. The court declared the FDPA unconstitutional. 217 F.Supp.2d 469 (2002). That decision is on appeal.		
Sablan, William	D. CO CR No. 00-CR-531-ALL	PI
inmate killing - evisceration stabbing of cellmate (in their cell). William Sablan allegedly confessed, on videotape, and said that he was defending himself. The letter "S" was written on the cell wall in the victim's blood. The USA requested permission to seek the death penalty and on her last day in office, Attorney General Janet Reno agreed. The defendants are Pacific Islanders, "Chmorran", from Saipan. The victim is Hispanic. The defendants, cousins, were doing federal time for a hostage-taking in Guam. Attorney General Janet Reno agreed to a capital prosecution on her last day in office.		
Sablan, Rudy	D. CO CR No. 00-CR-531-ALL	PI
inmate killing - evisceration stabbing of cellmate (in their cell). William Sablan allegedly confessed, on videotape, and said that he was defending himself. The letter "S" was written on the cell wall in the victim's blood. The USA requested permission to seek the death penalty and on her last day in office, Attorney General Janet Reno agreed. The defendants are Pacific Islanders, "Chmorran", from Saipan. The victim is Hispanic. The defendants, cousins, were doing federal time for a hostage-taking in Guam. Attorney General Janet Reno agreed to a capital prosecution on her last day in office.		
Church, Walter Lefight	W.D. VA CR No. 00-CR-104-ALL	W
another Petite policy case involving the April 1989 shotgun multiple murder of a family of three. Ealy avoided trial in state court in 1991 by a successful motion to suppress. A federal grand jury indicted Ealy and Church, charging them with two capital murders in the furtherance of a drug-trafficking enterprise and a third murder of a potential federal witnesses. They committed these killings while trying to rob one victim of \$30,000 that he was holding for a drug ring. The victims were white. Ealy was convicted and sentenced to life. Church's jury deadlocked.		
Sahakian, David Michael	S.D. IL CR No. 99-40044	W
three inmates at Marion alleged to be members of the Aryan Brotherhood. They are white and the victim black. Allegedly, Knorr held the victim while McIntosh stabbed him, on Sahakian's orders. Sahakian is allegedly one of three Aryan Brotherhood commissioners, the leader of the Aryan Brotherhood at Marion. The government claims the stabbing stems from an Aryan Brotherhood "war" with blacks from the District of Columbia transferred throughout the BOP from the District of Columbia facility at Lorton, Virginia.		
Taylor, Styles	N.D. IN CR No. 2:01 CR 073 JM	B
a robbery of a gun store and the killing of the proprietor. The defendants are African-American and the victim was white. Taylor was on parole. He has a juvenile record involving the robbery and shooting of a pizza delivery man.		
Thomas, Keoin	N.D. IN CR No. 2:01 CR 073 JM	B
a robbery of a gun store and the killing of the proprietor. The defendants are African-American and the victim was white. Taylor was on parole. He has a juvenile record involving the robbery and shooting of a pizza delivery man.		
Lien, David	N.D. CA CR No. 01-CR-20071-ALL	A
Fugitive co-defendant Chang was married to a bomb victim's sister. There were domestic problems and a divorce. Lien was allegedly sent to the victim's home with a bomb inside a toy mechanical dog. The victim later purchased batteries, put them in the toy, which blew up, killing him. The Attorney General required a capital prosecution.		

Defendant Name	D Ct Docket #	Race
Agofsky, Shannon Wayne	E.D. TX CR No. 1:03-CR 173	W
Agofsky, along with his brother, was serving a life sentence for the 1992 abduction and murder of a president of a bank. Agofsky took him to the bank and forced him to open the vault and then killed him. Agofsky is now accused of beating, kicking and stomping to death a fellow inmate at a federal prison in Beaumont, Texas. The victim was serving a term for arson and firearms. The government alleges this was a premeditated "gang" hit. All involved are white. This is the fourth murder at Beaumont since March 1997.		
Jones, Milton	E.D. MI CR No. 01-80571	B
involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth. Three defendants face the death penalty. Jones is charged with multiple (two) murders in 1998. Murder for hire is alleged as an aggravating circumstance. One victim was a suspected government informant. Stallworth is charged with laundering money. Canty and Mitchell are charged with killing another in '97. Canty is charged in two murders. All involved are African-American. The Attorney General required a capital prosecution.		
Canty, Raymond	E.D. MI CR No. 01-80571	B
involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth. Three defendants face the death penalty. Jones is charged with multiple (two) murders in 1998. One victim was a suspected government informant. Stallworth is charged with laundering money. Canty and Mitchell are charged with killing another in '97. Canty is charged in two murders. All involved are African-American. The Attorney General required a capital prosecution.		
Mitchell, Eugene	E.D. MI CR No. 01-80571	B
involves a gang called the "Young Boys Inc.". Milton Jones, the alleged kingpin, is charged along with 13 others, including state representative Keith Stallworth. Three defendants face the death penalty. Jones is charged with multiple (two) murders in 1998. One victim was a suspected government informant. Stallworth is charged with laundering money. Canty and Mitchell are charged with killing another in '97. Canty is charged in two murders. All involved are African-American. The Attorney General required a capital prosecution.		
McClure, Cornell Winfrei	D. MD CR No. 01-CR-367-ALL	B
shooting of a white woman at a secluded location on federal land. The victim was shot repeatedly with two different types of ammunition. There are signed confessions by both defendants. Millegan confessed that he committed the murder, along with McClure, both shooting the victim with their weapons. McClure wrote that he told Millegan they should "press her" about the robbery. The deceased was taken to a road on federal land in Beltsville, where both allegedly shot her. The defendants are black. The alleged motive was a belief that the victim had some involvement in the burglary of Millegan's apartment. The Attorney General required a capital prosecution.		
Gilmore, Charles Wesley	W.D. VA CR No. 00-CR-104-ALL	W
the April 1989 shotgun multiple murder of a family of three. A federal grand jury indicted Gilmore and co-defendants Ealy and Church, charging them with two capital murders in the furtherance of a drug-trafficking enterprise and a third murder of a potential federal witnesses. They are charged with these killings while trying to rob one victim of \$30,000 that he was holding for a drug ring.		
Rudolph, Eric Robert	N.D. AL CR No. 00-CR-422-ALL	W
1998 Southside bombing of a Birmingham abortion clinic, resulting in the death of an off-duty white police officer and injury to a white clinic nurse. Rudolph, who is white, was described by Attorney General Ashcroft as "America's most notorious fugitive." Rudolph is also charged with three bombings in Atlanta: the 1996 Olympic park bombing that killed a black woman and two other bombings in 1997. He was captured after a 5 year manhunt.		
Moussaoui, Zacarias	E.D. VA CR No. 01-CR-455-ALL	B
an alleged foreign national co-conspirator in the September 11, 2001 terrorist attack on the World Trade Center and Pentagon which killed over 3,000 and resulted in four airline crashes in New York, Pennsylvania and Washington, D.C. Moussaoui is French of Moroccan descent and is accused as a member of al-Qaida. He was in jail on September 11 after suspicious actions at a Minnesota flight school. There were victims of many nationalities and races.		
Cannon, Amesheo D.	E.D. MO CR No. S1-1:01CR00073RWS	B
a witness killing \$1512 murder for hire involving interstate travel from Tennessee to Missouri. Hyles faced state drug charges. The victim was murdered after his preliminary hearing testimony. Cannon allegedly murdered the victim by shooting him in his bed. The Attorney General required a capital prosecution.		
Perez, Wilfredo	D. CT CR No. 02-CR-7-ALL	H
a drug gang, "the Perez Organization" at war with "the Savage Nomads" in Hartford, Connecticut over a turf dispute and a drug and money kidnapping and robbery. Gonzalez was the alleged triggerman. The government claims that Gonzalez is a hired contract killer responsible for 9 other murders. All involved are Hispanic. The Attorney General required a capital prosecution.		

Defendant Name	D Ct Docket #	Race
Gonzalez, Fausto	D. CT CR No. 02-CR-7-ALL	H
a drug gang, "the Perez Organization" at war with "the Savage Nomads" in Hartford, Connecticut over a turf dispute and a drug and money kidnapping and robbery. Gonzalez was the alleged triggerman in this murder for hire. The government claims that Gonzalez is a hired contract killer responsible for multiple (9) other murders. All involved are Hispanic. The Attorney General required a capital prosecution.		
Mikos, Ronald	N.D. IL CR No. 02-CR 137	W
involves the § 1512 murder of a government witness to prevent her testimony before the grand jury. Mikos, a podiatrist, and another are accused in many counts of defrauding Medicare, HCFA and HHS. When the victim was served with a federal grand jury subpoena for her testimony regarding treatment/non-treatment by Mikos, he allegedly tried to persuade the victim to lie to the grand jury either by claiming lack of memory or stating that the surgery had been performed. When she refused he allegedly shot her. All involved are white.		
Fulks, Chadrick	D. SC No. 02-M-992-ALL	W
carjacking and interstate kidnapping from a WalMart parking lot of a woman who remains missing. Witnesses saw her with the defendants later that day in North Carolina. The defendants escaped November 4 from a Kentucky jail. Basham was arrested November 17, 2002 after allegedly trying to hijack a car at an Ashland, Kentucky mall. He has been charged with attempted murder and robbery. Fulks was arrested November 20, in Goshen, Indiana. The defendants are also suspected of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, whose car was found burned in West Virginia. All involved are white.		
Basham, Branden	D. SC No. 02-M-992-ALL	W
carjacking and interstate kidnapping of a woman from a South Carolina WalMart parking lot who remains missing and was likely raped and murdered. A surveillance camera recorded the abduction. Witnesses saw her with the defendants later that day in North Carolina. The defendants escaped November 4 from a Kentucky jail. Basham was arrested November 17, 2002 after allegedly trying to hijack a car and two women at an Ashland, Kentucky mall. He exchanged shots with the police. Fulks was arrested November 20, in Goshen, Indiana. The defendants are also suspected of kidnapping a Kentucky man and leaving him tied to a tree in Evansville, Indiana. Basham has told the FBI that he and Fulks abducted another victim, a 19-year-old West Virginia college student, whose car was found burned in West Virginia. She is also missing. All involved are white.		
LeCroy, William Emmett	N.D. GA CR No. 02-CR-38-ALL	W
a carjacking murder. The victim came home, was surprised inside her home, bound, raped, stabbed to death in her bedroom. LeCroy allegedly took car keys from her purse and then stole her truck. All involved are white.		
Green, Darryl	D. MA CR No. 02-CR-10301-ALL	B
two members of the Esmond Street Crew charged with the RICO shooting death of a gang rival ("Franklin Hill Giants") during the Caribbean Carnival in 2001. Key witnesses against them will be four members of the gang who have cut deals with federal prosecutors. Prosecutors allege four other shootings. Family members of the defendants claim the shooting was over a girl and not drugs. The grandmother of the victim and the state prosecutor criticized the decision to seek the death penalty. Both grew up in a violent neighborhood and Morris was shot when he was 16. An innocent bystander was spared when a bullet hit his rearview mirror.		
Morris, Branden	D. MA CR No. 02-CR-10301-ALL	B
two members of the Esmond Street Crew charged with the RICO shooting death of a gang rival ("Franklin Hill Giants") during the Caribbean Carnival in 2001. Key witnesses against them will be four members of the gang who have cut deals with federal prosecutors. Prosecutors allege four other shootings. Family members of the defendants claim the shooting was over a girl and not drugs. The grandmother of the victim and the state prosecutor criticized the decision to seek the death penalty. Both grew up in a violent neighborhood and Morris was shot when he was 16. An innocent bystander was spared when a bullet hit his rearview mirror.		
Skiba, Lawrence	W.D. PA 01-CR-291-ALL	W
an interstate mail fraud murder for hire, allegedly by uncharged hitman Eugene DeLuca, in 2000. Skiba and his brother-in-law, Shane Simeral, allegedly took out insurance policies on the victim in 1997. The United States alleges that Skiba was involved in two other suspicious deaths: a fatal fire at a hotel he owned in 1993 to collect insurance money and a 1998 suicide by a mentally challenged man after Skiba allegedly gave him a gun. Also alleged is an unsuccessful attempt to kill a man in 2000, three days before his death to collect on a \$15,000 life insurance policy. All involved are white.		
Corley, Odell	N.D. IN CR No. 02-CR-116-ALL	B
five people, three African-American males, one African-American female and one white woman (the pregnant girlfriend of Johnson), rob a bank and shoot to death a white female teller, wounding a white male security guard and another male teller. Corley allegedly was the ring leader who burst into the bank shooting. Johnson was also a gunman. McGregor was a driver. Gay and Ramsey were some distance away.		

Defendant Name	D Ct Docket #	Race
Foster, Aaron Demarco	D. MD CR No. 02-CR-410-ALL	B
leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in multiple (six) killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses are charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Recently, a critical witness in the case was shot 10 times and killed. He had been shot at twice recently. All involved are African-American.		
Moses, Keon	D. MD CR No. 02-CR-410-ALL	B
leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in multiple (six) killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses are charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Recently, a critical witness in the case was shot 10 times and killed. He had been shot at twice recently. All involved are African-American.		
Taylor, Michael Lafayette	D. MD CR No. 02-CR-410-ALL	B
leaders of one of West Baltimore's most violent drug gangs, the Lexington Terrace Boys, who are charged in multiple (six) killings, including one potential government witness who was killed to prevent him from testifying about an earlier double homicide of two members of a rival gang, the Stricker Street group. Since 1999 the gang operated from the Lexington Terrace and Edgar Allan Poe Homes public housing projects. Foster was acquitted of attempted murder in state court in 1998. Taylor and Moses are charged together in the double homicide and in a witness killing. There was also an attempted kidnapping of another potential witness to the 2001 killings. The latest victim is the third brother of one family to die on the streets of Baltimore. Investigators claim the group is in some way connected to 40 homicides. Recently, a critical witness in the case was shot 10 times and killed. He had been shot at twice recently. All involved are African-American.		
Cisneros, Luis	D. AZ CR No. 03-CR-730-ALL	H
multiple (three) RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were murdered together by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who will not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. All involved are Hispanic.		
Cisneros, Felipe N.	D. AZ CR No. 03-CR-730-ALL	H
multiple (three) RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were murdered together by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who will not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. All involved are Hispanic.		
Eppinger, Paul E.	D. AZ CR No. 03-CR-730-ALL	H
multiple (three) RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were murdered together by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who will not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. All involved are Hispanic.		
Rivera, Angel R.	D. AZ CR No. 03-CR-730-ALL	H
multiple (three) RICO murders by a prison and drug gang, "the Cisneros Organization." Luis Cisneros and Alvarado are charged in all three murders, the others in two. A father and son were murdered together by this Hispanic gang. The father was a suspected government witness/informant. 18 U. S. C. §924 and 1512. Numerous other murders, some of potential witnesses, are alleged as FRE 404(b) evidence. The least culpable were apparently Llamas and Alvarado, who will not face the death penalty. The prosecution was moved from New Mexico to Arizona after an alleged courthouse security leak. All involved are Hispanic.		
Nelson, Brian	E.D. LA CR No. 02-CR-304-ALL	B
September 2002 killing of a New Orleans man and the carjacking of his wife. The U.S. Attorney said: "If we're given the green light, we will seek the death penalty." However, the defendants entered into plea agreements with the United States Attorney. The defendants are black and the victims a young white married couple. The defendants had been mistakenly released by state authorities after allegedly committing a rape and robbery spree. Dawson and Franklin entered into plea agreements which were accepted and approved. Attorney General Ashcroft rejected a plea agreement and required a capital prosecution against Nelson.		

Defendant Name	D Ct Docket #	Race
Bolden, Robert, Sr.	E.D. MO CR No. 4:02-CR 0557 CEF (AGF)	B
a bank robbery murder. 18 U.S.C. §§1111, 2113 and 924(c). The victim is white, the son of a police officer. The defendants are African-American. Only Bolden will face the death penalty.		
James, Richard	E.D. NY CR NO. 02-773 (S-1) (SJ)	B
multiple (two) insurance fraud murders for hire involving foreign nationals from Guyana. The victims are also from Guyana. One died there. Both died from alcohol and drug ingestion. James is an insurance broker. Mallay, 57, has heart trouble. He and James are suspected of arranging other deaths in an insurance fraud scheme. Federal authorities are investigating 21 deaths of people insured through James.		
Mallay, Ronald	E.D. NY CR No. 02-773 (S-1) (SJ)	B
multiple (two) insurance fraud murders for hire involving foreign nationals from Guyana. The victims are also from Guyana. One died there. Both died from alcohol and drug ingestion. James is an insurance broker. Mallay, 57, has heart trouble. He and James are suspected of arranging other deaths in an insurance fraud scheme. Federal authorities are investigating 21 deaths of people insured through James.		
Zapata, Jairo	E.D. NY CR NO. 01-516	H
Attorney General Ashcroft rejected a plea agreement and required a capital prosecution against a foreign national from Columbia who had a signed cooperation agreement. Zapata is charged in one CCE drug-related murder for hire in 1993. Two separate homicides are alleged in aggravation, all three occurred during a seven month period in 1993.		
Ward, Israel	W.D. MO CR No. 3:02 CR 05025-ALL	B
multiple (two) gun murders during course of drug trafficking by black defendants from Tulsa selling crack in Tulsa. Smith is alleged to be a leader. A black victim allegedly stole drugs and was shot to death along with a white female who was with him at the time.		
Smith, Thomas	W.D. MO CR No. 3:02 CR 05025-ALL	B
multiple (two) gun murders during course of drug trafficking by black defendants from Tulsa selling crack in Tulsa. Smith is alleged to be a leader. A black victim allegedly stole drugs and was shot to death along with a white female who was with him at the time.		
Villegas, Hernaldo Medina	D. PR CR No. 3:02-CR-117-ALL	H
the Hobbs Act robbery of a local credit union, while an armed bank truck was making a deposit. A gunfight ensued and an armed guard was killed with a second head shot by Villegas after he was down. Lorenzo Catalan and Hernando Medina are alleged to have participated in the actual robbery, while Quester Sterling was allegedly the lookout. The 924(j) murder weapon was allegedly obtained in a carjacking. There are additional non-capital charges for a prior robbery of the same credit union by the same group. Only Villegas and Roman will face the death penalty. All involved are Hispanic.		
Roman, Lorenzo Catalan	D. PR CR No. 3:02-CR-117-ALL	H
the Hobbs Act robbery of a local credit union, while an armed bank truck was making a deposit. A gunfight ensued and an armed guard was killed with a second head shot by Villegas after he was down. Lorenzo Catalan and Hernando Medina are alleged to have participated in the actual robbery, while Quester Sterling was allegedly the lookout. The 924(j) murder weapon was allegedly obtained in a carjacking. There are additional non-capital charges for a prior robbery of the same credit union by the same group. Only Villegas and Roman will face the death penalty. All involved are Hispanic.		
Breeden, Shawn Arnette	W.D. VA CR No. 03-CR-13-ALL	B
involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim at least 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. The Attorney General required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Burden has a prior stabbing conviction.		
Carpenter, Michael Anthony	W.D. VA CR No. 03-CR-13-ALL	B
involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim at least 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. The Attorney General required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Burden has a prior stabbing conviction.		

Defendant Name**D Ct Docket #****Race**

Cassell, Kevin Thomas

W.D. VA CR No. 03-CR-13-ALL

B

involves four defendants from D.C. who drove to Virginia with the intent to commit robbery. Cassell was the driver. Breeden is alleged to be the organizer, having lost his girlfriend's car payment while gambling. Carpenter allegedly held the victim, a drug dealer, at gunpoint. Carpenter shot the victim in the knee with a shotgun. Then Breeden allegedly stabbed the victim at least 7 times in the chest and neck. Outterbridge then shot the victim in the head. All involved are African-American, except the victims of a violent, but non-fatal, robbery of a white couple using an ATM that resulted in serious injury. The group also committed another robbery. The Attorney General required a capital prosecution against Breeden, Carpenter and Cassell. Outterbridge, 19 and the youngest, is a cooperator. Burden has a prior stabbing conviction.

Ayala-Lopez, Carlos L.

D. PR CR No. 03-CR-55-ALL

H

robbery of a gun from a Veteran's Administrative Hospital guard and the murder of the security guard. Attorney General Ashcroft rejected a plea agreement calling for a sentence of 35 years to life and required a capital prosecution.

Bourgeois, Alfred

S.D. TX CR No. 02-216-ALL

W

a 2 year old child who died from "shaken baby syndrome". The baby was found unresponsive beside her father's tractor-trailer. Bourgeois and his wife told authorities the toddler had fallen out of the cab while they were making a delivery at Naval Air Station Corpus Christi. The toddler had seven major hemorrhages - two behind her right ear, two above her right eye and three in the back of her skull. The pathologist who examined the toddler's body called it "one of the worst cases of child abuse she'd ever seen." Bourgeois's wife and his 7-year-old daughter alleged Bourgeois had abused the toddler before. "(Bourgeois) hit her as hard as he would hit another man," the wife told the FBI, according to an affidavit.

FEDERAL CAPITAL DEFENDANTS WHO DIED BEFORE OR DURING TRIAL

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Pretlow, Bilal	D. NJ CR No. 90-CR-238	B

a young black New Jersey gang member committed suicide during his federal capital trial. He had been charged with two cocaine-and marijuana-related murders, one involving a 15-year-old-girl.

Brown, Terrance	E.D. MI CR No. 92-81127	B
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involves multiple killings - an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."

Stephens, Charles Lee	E.D. TX CR No. 2:99 CR 5	B
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involves multiple killings - three young black defendants, who are members of the "Crips" gang, were involved in a series of robberies and killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court for a botched bank robbery. They were accused of a bank robbery and fatally shooting teller Betty Paddle, 61. A 54 year old bank manager, was also shot, but survived. They are also charged with an intrastate kidnapping/robbery of a used car dealership (a Hobbs Act count) in which the victim was killed with a gun (a 924(j) count). The victim was a 63 year old retired minister. Stephens and Tatum were charged with another bank robbery in which a teller was killed. Tatum is charged in a November 4, 1998 slaying of Ronnie Dale Ritch, president of the First State Bank in Overton. Stephens and Tatum abducted Ritch, 50. Stephens had a brain tumor and died after surgery. The USA requested permission to seek the death penalty against all three, and was permitted to do so. All three deceased victims were white.

FEDERAL CAPITAL PROSECUTIONS WHICH WERE DISMISSED BY THE JUDGE FOR LEGAL REASONS

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Williams, George Travis	M.D. GA CR No. 1:92-CR-142	B
a black Atlanta drug distributor who had capital charges dismissed in connection with three murders. Mr. Williams was accused of ordering the killing of one person in 1988, and killing two in 1989 and another in 1990. Murder for hire is alleged as an aggravating circumstance. In June, 1994, the district court dismissed the capital charges on double jeopardy grounds, because the government had already secured a conviction and 30-year sentence for much of the alleged drug-related conduct. A government motion to reconsider this ruling was denied. All involved were African-American.		
Garcia, Efraim	E.D. MI CR No. 97-80727	H
a gang known as the "Cash Flow Posse" charged with various racketeering crimes, including five murders and other assaults. The motive was a dispute over gang territory. Garcia was a 29 year old Columbian foreign national. All the killings but one predate the effective date of the '94 act. Garcia was the only capital defendant. He was charged with personally carrying out all five murders. Garcia was offered a plea to life, signed a Rule 11 plea agreement but the plea agreement broke down during the colloquy in court. The United States then decided to seek the death penalty. However, the district court dismissed the capital count (a racketeering murder) because of an insufficient "Commerce Clause" nexus. 68 F.Supp.2d 802 (E.D. MI 1999). The government decided not to appeal.		
Colon-Miranda, Andres	D. PR CR No. 95-029 JAF	H
a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. The Attorney General required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.		
Martinez-Velez, David Samuel	D. PR CR No. 95-029 JAF	H
a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. The Attorney General required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.		
Rosario-Rodriguez, Edwin	D. PR CR No. 95-029 JAF	H
a judge blocked a capital trial of three Puerto Rican defendants involved in a drug gang homicide. 985 F.Supp. 36; 992 F.Supp. 82. The government initially indicated that authorization would not be sought for a capital prosecution, but then attempted to reverse its position seven weeks before trial. The Attorney General required a capital prosecution. The district court declined to continue the trial and refused, despite the Attorney General's authorization and notice of aggravating circumstances filed shortly before trial, to permit the government to ask for the death penalty.		
Brown, Ricky Lee	N.D. WV CR No. 1:98CR34	W
arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.		
Brown, Barbara M.	N.D. WV CR No. 1:98CR34	W
arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.		
Ables, Janette A.	N.D. WV CR No. 1:98CR34	W
arson/murder by their parents of five children, after an insurance policy was issued on the dwelling and the Brown's children. Federal charges were based on the use of the mail and phones. However, the capital counts were dismissed after the Supreme Court's decision in United States v. Jones, 592 U.S. 848 (2000). After a non-capital trial, the Browns were acquitted. Ables pled guilty and became a government witness. All involved are Caucasian. State charges were also filed.		

Defendant Name**D Ct Docket #****Race**

Stewart, Charles Louis

W.D. KY CR No. 4:99-CR-11-M

W

involves multiple killings - contract killing of men in Alabama and Kentucky. Lyon, 19, and co-defendant Charles Stewart, 54, were charged with conspiracy and murder for hire. Stewart and Richard Dorman, 62, were charged with being partners in an 18-month forged-check and fraud scheme, using the deceased's identity. Lyon and his deceased father, Stewart's nephew, were hired to murder James Norris in Kentucky. Norris was found under a bale of hay beaten to death in a barn behind his home. Lyon was also hired to kill James Nichols in Alabama, whose body was discovered in 1999 in a partially submerged van. Nichols' 85 year old mother was also in the van, but survived. Co-conspirator Dorman was kidnapped (Interstate) and locked into the trunk of a car that was then run into the Green River in Henderson County. He survived to be charged as part of the conspiracy. The elder Lyon committed suicide to avoid apprehension. Stewart was arrested in the Spring of 2000 after appearing on "America's Most Wanted." The Court set a deadline for the Attorney General's decision whether to seek the death penalty. Lyon faced the death penalty but was sentenced to life in prison after his jury was instructed that Stewart would not because the Attorney General took too long to file a notice of intent to seek the death penalty. A third bank fraud victim is missing and presumed dead. Lyon committed an unrelated fourth murder. The Court set a deadline for the Attorney General's decision whether to seek the death penalty. All involved are white.

Gomez-Olmeda, David

D. PR CR No. 03-CR-73-ALL

H

a killing during an FBI undercover sting operation involving guns. The victim was an FBI confidential informant who was wired at the time. The FBI witness was shot to death and robbed in an FBI surveillance van. A videotape recorded the murder. The money robbed was FBI money and the car stolen was an FBI car. David Gomez entered into a plea agreement. However, Attorney General Ashcroft rejected a plea agreement and required a capital prosecution.

Pennington, Tiffany Dominique

W.D. KY CR No. 01-CR-35-ALL

B

a bank robbery/murder of a white woman by two black defendants. Pennington was the triggerman. Moore provided the gun and was the get-a-way driver.

Only Pennington faced the death penalty. He attempted to plead guilty before the government filed a notice of intent to seek the death penalty, but the plea was rejected and the government filed its notice. Thereafter, his guilty plea was accepted. Since the indictment did not allege Post-Ring "special findings," the District Court ultimately dismissed the Notice of Intent to seek the death penalty. A government appeal was dismissed.

Frye, James Edward

S.D. MS CR No. 01-CR-8-ALL

B

involves carjacking and multiple killings of two black victims who were attempting to buy about \$30,000 worth of cocaine and were ripped off and killed.

Both African-American defendants confessed, blaming the other as the triggerperson. There was a post-mortem attempt to dismember and rebury the bodies. The Notice of Intent to Seek the Death penalty against Frye was dismissed as filed too late. Cooper's life sentence was affirmed. 2003 WL 21672845 (5th Cir.).

Safarini, Zayd Hassan Abd Latif

D. DC CR No. 91-CR-504-ALL

AR

one of the four hijackers who used semiautomatic weapons, hand grenades and explosives to take over a Pan Am flight in Karachi, Pakistan in 1986, which left 22 people dead, including 2 Americans of Indian descent. Safarini is a Palestinian.

Hatten, Charles

S.D. WV CR No. 8:02-00232-02

W

a drug gun murder of a possible government cooperating witness, a member of a multi-state methamphetamine drug trafficking ring. Both the defendant and the victim have substantial criminal records. All involved are white. The Attorney General required a capital prosecution but the District Court dismissed the NOI as filed late. A government appeal was dismissed on motion by the Department of Justice.

FEDERAL CAPITAL CASES IN WHICH THE ATTORNEY GENERAL WITHDREW A NOTICE OF INTENT TO SEEK THE DEATH PENALTY

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Carrington, Arleigh	M.D. GA CR No. 92-82MAC-WDO	B
two black crack cocaine dealers in Macon, Georgia, in connection with the murders of two other crack dealers. Attorney General Barr authorized this death prosecution in his last week in office. In 1993, the government dropped its request for the death penalty against these two defendants. Both 848(e) murder charges were also later withdrawn, and the defendants subsequently pleaded guilty to various narcotics-related charges		
Chatfield, Tony	M.D. GA CR No. 92-82MAC-WDO	B
two black crack cocaine dealers in Macon, Georgia, in connection with the murders of two other crack dealers. Attorney General Barr authorized this death prosecution in his last week in office. In 1993, the government dropped its request for the death penalty against these two defendants. Both 848(e) murder charges were also later withdrawn, and the defendants subsequently pleaded guilty to various narcotics-related charges		
Goldston, Anthony	D. DC CR No. 92-CR-284-01	B
involves multiple killing. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African-Americans.		
Green, William	E.D. LA CR No. 92-468	B
two black New Orleans inner-city gang members, in connection with an allegedly drug-related murder. In 1992, the Government dropped its request for the death penalty in this case. The defendants subsequently entered pleas to conspiracy to murder and a weapons offense in January, 1993. Brown received a 10-year sentence; Green received 15 years.		
Harris, Mario	D. DC CR No. 92-CR-284-01	B
four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African-Americans.		
Hoyle, Mark	D. DC CR No. 92-CR-284-01	B
Involves multiple killing. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African-Americans.		
McCollough, John	D. DC CR No. 92-CR-284-01	B
involves multiple killing. Four African-American D.C. residents who were charged with a total of eight murders as leaders of a District of Columbia drug gang known as the Newton Street Crew. This case involved a triple slaying in which the killers wrapped the victims' heads in duct tape before shooting them at close range. Despite authorization to seek the death penalty by Attorney General Barr in 1992, the government did not ultimately request the death penalty at trial. McCollough participated in five murders. Goldston founded the gang. Hoyle ran the gang. The defendants and victims were all African-Americans.		
Murray, Michael	M.D. PA CR No. 92-200	B
a member of an African-American gang headed by one Jonathan Bradley, which involved the killing of a black Harrisburg drug dealer. DOJ declined to approve the U.S. Attorney's request to authorize the death penalty against Bradley, who allegedly ordered the killing, and against another participant in the shooting, Emmanuel S. Harrison. In 1994, after jury selection had already begun, Murray was permitted to plead guilty to a term of years, and the government withdrew its request for the death penalty. Judge Sylvia Rambo rejected the recommended less-than-life sentence and the case was reset for trial. In 1995, the Attorney General instructed the United States Attorney not to seek the death penalty on the eve of a capital trial scheduled to begin on the following Monday.		
Mathis, Ronald Eugene	M.D. FL CR No. 91-301-CR-T (18) (A)	B
a black Tampa, Florida drug distributor, for having allegedly ordered a murder in retaliation for the theft of drugs. Murder for hire is alleged as an aggravating circumstance. In 1994, the government withdrew its notice of intention to seek the death penalty, and subsequently withdrew the 21 U.S.C. §848(e) homicide count as well. Trial began on the remaining (noncapital) counts and Mathis was convicted. This case had been authorized as a capital prosecution by Attorney General Barr in early 1992.		

Defendant Name	D Ct Docket #	Race
Brown, Oliver	E.D. LA CR No. 92-468	B
two black New Orleans inner-city gang members, in connection with an allegedly drug- related murder. In 1992, the Government dropped its request for the death penalty in this case. The defendants subsequently entered pleas to conspiracy to murder and a weapons offense in January, 1993. Brown received a 10-year sentence; Green received 15 years		
Thomas, Vernon	E.D. VA CR No. 3-92-CR- 68	B
the last of the four Richmond, Virginia defendants in the "Newtown gang case." The government dropped its request for the death penalty on the eve of Thomas' separate trial from the other three capital defendants, just before an evidentiary hearing to determine whether the death penalty should be barred because the defendant had mental retardation.		
Marrero, Jose Rodriguez	D. PR CR No. 97-284 (JAF)	H
a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. Murder for hire is alleged as an aggravating circumstance. The Attorney General required a capital prosecution against all four defendants. All involved are Hispanic.		
Tidwell, Tyrone	E.D. PA CR No. 94-353	B
a 35 year old African-American beauty salon owner who allegedly was a middle man between crack cocaine organizations in New York and Philadelphia. Tidwell solicited the killing of two black men in 1989 and 1991, one for selling crack on "his corner" and a second suspected of stealing drugs. Murder for hire is alleged as an aggravating circumstance. In 1996, the Attorney General authorized the death penalty for the 1989 homicide. However, shortly before the defendant's trial, the U.S. Attorney requested that the death penalty be withdrawn, and the Attorney General approved the request.		
Wyrick, Kevin	W.D. MO CR No. 94-00194-01	W
when the jury deadlocked on the punishment for the "boss" of a drug ring, Damon Moore, the government announced that it was withdrawing its request for the death penalty for Wyrick, the triggerman.		
Acosta, John Lefty	D. NM CR No. 95-538-MV	H
involves multiple killings and murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.		
DesAnge, Omar	W.D. VA CR No. 95-00046RH	B
the killing of an African-American, apparently a crack addict, who was a state's witness. The government withdrew its intention to seek the death penalty shortly before the scheduled April 1996 trial after the Attorney General declined to authorize the death penalty in an unrelated case in the Western District of Virginia, being prosecuted by the same Assistant United States Attorney. So the United States reached agreement with the defense on the drug distribution charges and agreed the homicide count would be tried as a non-capital case.		
Martin, Roy Ray	N.D. TX CR No. 5-95-CR- 0017-C (Cummings)	W
in the fall of 1994, three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.		
Mungia, Eli Trevino	N.D. TX CR No. 5-95-CR-0017-C	H
in the fall of 1994, three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.		
Mungia, Ricky Rivera	N.D. TX CR No. 5-95-CR-0017-C	H
in the fall of 1994, three (one white, two Hispanic) young men randomly attacked blacks, killing one and seriously wounding two, in a racially motivated spree in Lubbock, Texas. Authorization was granted by Attorney General Reno in early October, 1995. The district court granted severance and the first defendant was scheduled for trial but the government withdrew the death penalty notice as to all three defendants who were then joined for trial and convicted.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Peng, You Zhong	E.D. NY CR No. 95 0870	A
two foreign national Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.		
Williams, Jerry	D. MD CR No. WMN 97-0355	B
involves multiple killings. Williams' co-defendant Anthony Jones faced death penalty for three murders, including an allegation that he ordered his step-brother killed from jail because he feared he was about to become a government witness. Williams was charged as the triggerman in a single homicide. Numerous other homicides were alleged in aggravation as to Jones. The cases were severed. Jones was convicted in 1998, and the jury recommended a life sentence. Thereafter, the government withdrew the request for the death penalty as to Williams, who was convicted and is serving a life sentence.		
Westmoreland, Guy	S.D. IL CR No. 98-30022- WDS	W
the murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Co-defendant Richard Abeln confessed to hiring Deandre Lewis, 23, through Westmoreland, to kill his wife. Murder for hire is alleged as an aggravating circumstance. Abeln faced the death penalty but pled guilty and received a life sentence. All involved are white, except Lewis, who is African-American.		
Lewis, Deandre	S.D. IL CR No. 98 30022 WDS	B
the murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Co-defendant Richard Abeln confessed to hiring Deandre Lewis, 23, through Westmoreland, to kill his wife. Abeln faced the death penalty but pled guilty and received a life sentence. Murder for hire is alleged as an aggravating circumstance. All involved are white, except Lewis, who is African-American.		
Locust, Jeremiah	W.D. NC CR No. 2:98CR185	NA
the killing of 36 year old, white, National Park Service ranger for the Great Smoky Mountains National Park in 1998 by a Native American who was intoxicated. Locust was threatening visitors to the park with a rifle. Kolodski and other park rangers responded. (Locust fired at another ranger's car smashing the windshield.) Kolodski was wearing a bullet proof vest but the single shot grazed his vest before entering his chest and wounding him fatally. The jury rejected a premeditation theory and the government withdrew its request for the death penalty.		
Pena-Gonzalez, Nicholas	D. PR CR No. 97-284 (JAF)	H
a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. Murder for hire is alleged as an aggravating circumstance. The Attorney General required a capital prosecution against all four defendants. All involved are Hispanic.		
Perez, Luis Gines	D. PR CR No. 98-164 (DRD)	H
drug smuggling and a single homicide of a co-conspirator. The defendants are Hispanic, college educated businessmen. There was a joint plan to kill and Gines was alleged to have shot the victim on Melendez's boat and together they dumped the body. Authorization was withdrawn when a key government witness flunked a polygraph on whether he was the actual killer.		
Perez, Ricardo Melendez	D. PR CR No. 98-164 (DRD)	H
drug smuggling and a single homicide of a co-conspirator. The defendants are Hispanic, college educated businessmen. There was a joint plan to kill and Gines was alleged to have shot the victim on Melendez's boat and together they dumped the body. Authorization was withdrawn when a key government witness flunked a polygraph on whether he was the actual killer.		
Best, Jason	N.D. IN CR No. 2:00CR171RL	B
a 1999 drug trafficking 924 (c) and (j), gang murder. The murder was allegedly revenge for the robbery of drug trafficking proceeds from Best's girlfriend. Best was alleged to be a member of the "Bronx Boys" who was released from prison in 1998 after a two year sentence for cocaine sales. Best pled guilty with others in 1996 after stray shots into a house killed a 10 year old boy in his bed in 1993. The Attorney General required a capital prosecution but eventually allowed prosecutor's to dismiss the murder count after Best was given a life sentence after a separate trial in the drug case. Murder for hire is alleged as an aggravating circumstance. All involved are African-American.		
McMillian, Christopher	N.D. NY CR No. 3:00 CR-269-ALL	B
murder during a CCE, involving a drug rip off. Another drug dealer was beaten to death. His marijuana and cash were stolen. The Attorney General required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who was found to be mentally retarded by both the defense and government experts. All involved are African-American.		

FEDERAL CAPITAL PROSECUTIONS ENDING IN GUILTY PLEAS TO A SENTENCE OTHER THAN DEATH

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Culbert, Stacy	E.D. MI CR No. 92-81127	B
involves multiple killings - an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."		
Johnson, Darryl	W.D. NY CR No. 92-159-C	B
involves multiple killings - an African-American from the West Coast charged with two cocaine-related killings by a California and Tennessee connected, Buffalo, New York group, suspected in as many as five other murders. Murder for hire is alleged as an aggravating circumstance. A guilty plea was entered in 1995, on the morning of trial. The defendant was sentenced to life imprisonment.		
O'Bryant, Lonnie	E.D. MI CR No. 92-81127	B
involves multiple killings - an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."		
Zambrano, Jesus	E.D. TX CR No. 9:91-CR4	H
a third co-defendant in the Villarreal case who testified against the two brothers at trial.		
Perry, Wayne Anthony	D. DC CR No. 92-474	B
involves multiple killings and a hitman for a D.C. cocaine distribution ring between 1989-1991, facing eight homicide counts. Murder for hire is alleged as an aggravating circumstance. In 1994, the defendant pleaded guilty to five homicide counts in exchange for the government's dropping the death penalty. He received five consecutive nonparoleable life sentences and was sent to the federal "super max" prison in Colorado, ADX Florence.		
Williams, Michael	E.D. MI CR No. 92-81127	B
involves multiple killings - an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."		
Wilkes, Charles	E.D. MI CR No. 92-81127	B
involves multiple killings - an innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."		
Valle-Lassalle, Victor Manuel	D. PR CR No. 97-284 (JAF)	H
a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination – the government witness was cut up with a machete. The Attorney General required a capital prosecution against all four defendants. Murder for hire is alleged as an aggravating circumstance. All involved are Hispanic. Valle-Lassalle received a 40 year sentence.		
Woody, Charles	C.D. CA CR No. 99-84-AHM	H
one of three related Mexican Mafia cases. A previous case, involving 12 murders and attempted murders, United States v. Alex Aguirre, et al.(C.D. CA CR 95-345(A)-RSWL) was not prosecuted as a death penalty case. The Attorney General required a capital prosecution. One defendant in that case was found not guilty and he is said to have been killed by Woody, 28, in a generational power struggle. Woody was also involved in several murder conspiracies.		
Furrow, Buford	C.D. CA CR No. 99-838 (A) -RAP	W
the racially motivated shooting and killing of an Asian (Filipino) postal worker in 1999. Furrow, 37 and Caucasian, is alleged to be a member of the Aryan Nation. He also walked into a Jewish Community Care Center and shot five people, including three children. Furrow then carjacked a Toyota. Furrow described this attack as "a wake up call to America to kill Jews."		

Defendant Name	D Ct Docket #	Race
McCauley, Donzell M.	D. DC CR No. 94-121	B
a young black man from the District of Columbia who struggled with and shot to death a police officer. Attorney General Reno required a capital prosecution for the murder of a white law enforcement police officer despite the U.S. Attorney's initial decision that the death penalty not be sought. This authorization marked the first time in the post-Gregg era of capital punishment that the Attorney General required a capital prosecution in a federal criminal case despite the initial opposition of the local U.S. Attorney. Subsequently, the defendant entered a plea of guilty and was sentenced to life imprisonment.		
Vest, James	W.D. MO CR No. 94-00037-04	W
involves multiple killings - three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.		
Vest, Mark	W.D. MO CR No. 94-00037-04	W
involves multiple killings - three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.		
Vest, Steven	W.D. MO CR No. 94-00037-04	W
involves multiple killings - three white brothers from Kansas City who were approved for a capital prosecution in 1994. They were charged with the well-planned double homicide of two Mexican drug dealers. Graves were dug and the victims abducted and bound with duct tape, suffocating to death. A fourth brother, Darrell Vest, did not face the death penalty. One defendant was also charged with a separate murder count in another drug rip-off. Guilty pleas were negotiated for all three.		
Bonds, Andre	E.D. MO CR No. 4:95CR332	B
a black teenager in an interstate, cross-racial carjacking case involving an 18 year old African-American defendant (and his 16 year old co-defendant) who allegedly killed one white female, took her car across state lines, kidnaping and raping her girlfriend - another Caucasian. Mr. Bonds pled guilty in 1996 and was sentenced to life imprisonment. The victim was white.		
Chen, Fu Xin	E.D. NY CR No. 95 0870	A
two foreign national Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.		
Chen, Jia Wu	E.D. NY CR No. 95 0870	A
two foreign national Chinese gang members who kidnaped intrastate Chinese nationals living in the U.S. for ransom to be paid by relatives in China. One victim was raped and severely abused before being strangled after her family failed to pay the ransom demanded. Jia Wu and Fu Xin Chen pled guilty and received life sentences in 1996. Capital authorization against a third defendant, You Zhong Peng, was withdrawn by the Department of Justice just three days before his scheduled 1997 trial.		
Damon, Marvin	E.D. VA CR No. 3:95CR45	B
two members of a drug ring, from Richmond, Virginia, African-American, 52 and 30 years old, charged with the distribution of heroin, mainly in one housing development in Richmond where another African-American was shot to death in 1994 by Damon, at co-defendant Williams' request. The government alleged numerous other homicides committed by Damon as Williams' enforcer. Damon agreed to plead guilty, attempted suicide and finally entered a plea. Williams pled guilty after a jury was seated.		
DeLaTorree, Jason	D. NM CR No. 95-538-MV	H
involves multiple killings and murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.		
Fleming, Lamont	E.D. NC CR No. 4:95-CR-41-1-H-2	B
involves multiple killings and a crack cocaine conspiracy alleging four 1995 murders by an African-American gang originating in Brooklyn, New York. Fleming, Gist and co-defendant Linton were triggermen. DOJ did not authorize capital prosecutions against four other defendants, including Linton. Guilty pleas were entered by the two capital defendants who were charged in two murders. The two capital homicides involved the separate murders of two participants in a prior drug-related murder. All involved are black.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Gist, Cory	E.D. NC CR No. 4:95-CR-41-1-H-2	B
involves multiple killings and a crack cocaine conspiracy alleging four 1995 murders by an African-American gang originating in Brooklyn, New York. Fleming, Gist and co-defendant Linton were triggermen. DOJ did not authorize capital prosecutions against four other defendants, including Linton. Guilty pleas were entered by the two capital defendants who were charged in two murders. The two capital homicides involved the separate murders of two participants in a prior drug-related murder. All involved are black. Attorney General Reno required a capital prosecution as to Gist.		
Haworth, Richard	D. NM CR No. 95-491 LH	W
Haworth was the leader of a New Mexico drug trafficking conspiracy, during the course of which he murdered at least three individuals (two Hispanic, one Anglo). The government dropped its request for the death penalty in exchange for his plea and a life sentence on the eve of his scheduled trial in February, 1997. After six weeks of jury selection, the government accepted Spivey's guilty plea to a single homicide count and a 30-year sentence. Both Haworth and Spivey are white.		
Mazzini, Marcos	D. NM CR No. 95-538-MV	H
involves multiple killings and murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.		
Najar, Vincent	D. NM CR No. 95-538-MV	H
involves multiple killings and murder in the aid of racketeering. The charges involve an L.A. gang, Sureno 13, moving crack and PCP from L.A. to Albuquerque. Among the seven murders connected to the gang one was of a high school student and another was a triple homicide. Five attempted murders were alleged, as well as a conspiracy to kill rival black drug dealers. Authorization was requested and granted by the Attorney General in 1996, for four of six defendants, but the government later withdrew its request for the death penalty as to one, after he was shown to be uninvolved in one of the two homicides originally charged against him. The remaining three entered guilty pleas: Mazzini received 25 years; Najjar received 30 years; and De LaTorre received 22 years.		
Spivey, Everett	D. NM CR No. 95-491	W
Haworth was the leader of a New Mexico drug trafficking conspiracy, during the course of which he murdered at least three individuals (two Hispanic, one Anglo). The government dropped its request for the death penalty in exchange for his plea and a life sentence on the eve of his scheduled trial in February, 1997. After six weeks of jury selection, the government accepted Spivey's guilty plea to a single homicide count and a 30-year sentence. Both Haworth and Spivey are white.		
Williams, Robert Russell	E.D. VA CR No. 3:95CR45	B
two members of a drug ring, from Richmond, Virginia, African-American, 52 and 30 years old, charged with the distribution of heroin, mainly in one housing development in Richmond where another African-American was shot to death in 1994 by Damon, at co-defendant Williams' request. The government alleged numerous other homicides committed by Damon as Williams' enforcer. Murder for hire is alleged as an aggravating circumstance. Damon agreed to plead guilty, attempted suicide and finally entered a plea. Williams pled guilty after a jury was seated.		
Beckford, Devon Dale	E.D. VA CR No. 3:95CR00087	B
involves multiple killings. Another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) Murder for hire is alleged as an aggravating circumstance. After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capital charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.		
Bennett, Daniel Ray	C.D. CA CR No. 96-1140(A)-ER	B
an African-American drug boss and a hitman, in this first Ninth Circuit case to be authorized for death penalty prosecution, Stanley was accused of hiring Bennett to murder a former member of Stanley's drug trafficking operation in Las Vegas, Nevada. Government court filings indicated that the murder conspiracy was monitored by wiretap. Murder for hire is alleged as an aggravating circumstance. Both pled guilty. Attorney General Reno required a capital prosecution.		
Cable, Donald Thomas	M.D. TN CR No. 3:96- 00004	W
the 1995 killing of a federal grand jury investigation witness two days before her testimony. The female victim was in her early 40's and white, as are all the defendants. Cable was the triggerman who is said to have stabbed the victim to death. Dugger hired Cable after one David Day, the government's key witness, hired Dugger on behalf of a large-scale methamphetamine dealer, Tim Holloway. Dugger was in poor health (a recent liver transplant) and allegedly incompetent. Day received a 20 year sentence as a government witness.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Clary, Moses	D. NJ CR No. 96-576 (Rodriguez)	B
a 19-year-old African-American defendant with a history of mental illness was charged with complicity because his deceased co-conspirator shot a security guard during a robbery of an armed car in a suburban Camden, N.J. shopping mall. The male victim was black and seventeen. A white bystander, a 14 year old girl, was accidentally shot and killed by the security guard during the robbery. Clary accepted an offer of life in 1998, attempted to withdraw it, and was refused.		
Cuff, John	S.D. NY CR No. 96 CR 515 (MJW)	B
involves multiple killings in a CCE prosecution of the leaders of a drug organization which operated in the Bronx and Manhattan for a decade. Heatley, 43, ordered 14 homicides, admitting involvement in 13, ten of which were carried out by Cuff, who acted as Mr. Heatley's bodyguard and driver. Cuff had been a housing police officer from 1982 until 1986. Heatley pled guilty in return for a life sentence. On the 1999 trial date, Cuff also pled guilty. He also received a life sentence. Heatley has a serious history of crimes of violence, but was previously acquitted four times in state court trials.		
Kaczynski, Theodore John	E.D. CA CR No. S-96-259	W
the Unabomber case. The defendant faced capital indictments in two federal districts, Eastern District of California and District of New Jersey, for terrorist mail bombings over a period of 18 years. Three men were killed, in California and New Jersey, and 29 were injured, including one man whose arm was blown off and another who lost a hand. A plea was negotiated as opening statements were about to commence and after a BOP psychiatrist had confirmed defense experts' findings that the former Berkeley professor suffered from paranoid schizophrenia. Kaczynski tried, but failed, to withdraw his guilty plea. 2001 WL 114688 (9th Cir. 2001). He remains at ADX Florence.		
Montanez, Ian Rosario	D. PR CR No. 96-001 (PG)	H
the first death penalty case to be authorized in a Puerto Rico federal court. The Attorney General required a capital prosecution against the alleged triggerman in a bank robbery during which a security guard was killed and several bystanders injured. Montanez pled guilty in April 1998 to a less-than-death sentence.		
Ortiz-Velez, Felix	M.D. PA CR No. 3:CR-96- 005 (Rambo)	H
two drug-related murders, one involving torture. Murder for hire is alleged as an aggravating circumstance. Ortiz pled guilty to being an "enforcer," acting on the instructions of Mr. Otero, who also pled guilty. Otero's homicide counts were dismissed although both received life sentences, Otero on the drug case.		
Otero, Julio	M.D. PA CR No. 3:CR-96-005	H
two drug-related murders, one involving torture. Murder for hire is alleged as an aggravating circumstance. Ortiz pled guilty to being an "enforcer," acting on the instructions of Mr. Otero, who also pled guilty. Otero's homicide counts were dismissed although both received life sentences, Otero on the drug case.		
Stanley, Edward	C.D. CA CR No. 96-1140(A)-ER	B
an African-American drug boss and a hitman. United States v. Daniel Ray Bennett and Edward Stanley (C.D. CA CR No. 96-1140(A)). In this first Ninth Circuit case to be authorized for death penalty prosecution, Stanley was accused of hiring Bennett to murder a former member of Stanley's drug trafficking operation in Las Vegas, Nevada. Murder for hire is alleged as an aggravating circumstance. Government court filings indicated that the murder conspiracy was monitored by wiretap. Both pled guilty. Attorney General Reno required a capital prosecution.		
Storey, Gregory	D. KS CR No. 96-40018-01-OES	W
a white prison inmate who killed another white prisoner at the United States Penitentiary at Leavenworth. Storey may have had Aryan Brotherhood ties. The death penalty was initially sought. However, the prosecution ended in a negotiated guilty plea to second degree murder in 1997. Storey was sentenced to 327 months, to run consecutive to sentences imposed in Nevada and Colorado. He subsequently was charged in a nationwide Aryan Brotherhood RICO indictment in Los Angeles.		
Walter, Abram	D. AK CR No. F96-026 (HRH)	W
a white survivalist, charged with the robbery murder of a native Alaskan storekeeper whose remote outpost in a roadless Alaskan wilderness served as a U.S. Post Office. The Attorney General required a capital prosecution.		
Frank, Deric	S.D. NY CR No. 97 CR 269 (DLC)	B
domestic killing - the March 11, 1997 intrastate kidnaping of the (former) girlfriend of co-conspirator, turned government witness, Deric Frank, from Stamford, Connecticut. The defendants assaulted her and took her to the Bronx where she was burned alive in the trunk of her car. There were multiple orders of protection of the deceased due to repeated domestic violence complaints against Frank. Both the defendants, and the victim, 24, are black. Deric Frank was authorized for a federal capital prosecution, pled guilty and became a witness against Bailey. Bailey was sentenced to life in prison, but did not face the death penalty. All involved were African-American.		

Defendant Name**D Ct Docket #****Race**

Heatley, Clarence

S.D. NY CR No. 96 CR 515 (MJW)

B

involves multiple killings in a CCE prosecution of the leaders of a drug organization which operated in the Bronx and Manhattan for a decade. Heatley, 43, ordered 14 homicides, ten of which were carried out by Cuff, a former policeman. Heatley pled guilty in return for a life sentence. On the 1999 trial date, Cuff also pled guilty. He also received a life sentence. Heatley has a serious history of crimes of violence, but was previously acquitted four times in state court trials.

Holland, Charles

N.D. AL CR No. 96-B-0208-NE

W

the 1991 killing of an informant in a drug conspiracy case who had been given a new identity and sent out of state. However, he returned and was spotted at a flea market in Ft. Payne. The drug ring boss, Marvin Holley, and Mr. Holland kidnaped (intrastate) the victim and killed him with a hammer. Holley's trial in 1998 resulted in a life sentence. All involved are white.

Lam, Tanh Huu

E.D. CA CR No. S 97-054-WBS

A

the throwing of a Molotov cocktail through a dining room window. One victim, a 9 year old Asian female, was killed. Others were injured. The target was alleged to be a man who had an affair with Lam's wife. There were two cars seen at the time of the bombing/arson. Authorization for Lam was initially not sought or granted. The jury deadlocked at Lam's first trial. The government then produced a new witness who tape-recorded Lam talking about setting up another arson. The Attorney General gave the go-ahead to seek the death penalty at a retrial, but a conditional guilty plea was entered. Federal jurisdiction is based on the happenstance that an apartment building was bombed. All involved were Vietnamese.

Reader, Arthur Charles

E.D. TX CR No. 5:97 CR 15

B

the abduction of a 27 year old African-American female by her 35 year old African-American boyfriend in Texarkana, Texas. After crossing the line over into Texarkana, Arkansas, the victim was stabbed eighty four times, hit in the head with a brick and left to die. The defendant allegedly would not tell law enforcement officials where she was because he wanted her to die.

Wooldridge, Steven W.

W.D. AR CR No. 4:97 CR 40013-001

W

a Ft. Smith, Arkansas interstate kidnaping, sexual attack and murder. Wooldridge asked for directions from the female victim in her front yard in Texarkana, Arkansas. He then forced her into his vehicle and took her to a storage shed in Texas where he may have sexually assaulted her. Eventually, Wooldridge took his victim to another location and killed her. Wooldridge confessed, denying sexual assault. All involved are white.

Black, Douglas

D. CO CR No. 98-CR-196

W

two "super-max", Florence, Colorado inmates, who attacked two suspected snitches. One inmate, an ex-police officer, was murdered. Another inmate survived the attack. The stabbing was witnessed by prison staff who were assaulted when they tried to get Riddle off the victim. The United States Attorney did not seek permission to ask for the death penalty but the Attorney General required a capital prosecution. Riddle negotiated a 168 month cap. Black agreed to plead to aggravated assault in return for a sentence of no more than 84 months. Black had a prior murder. Riddle had a record of crimes in and out of prison. Black's sentence was 78 consecutive months.

Holloway, Tim

M.D. TN CR No. 3:96-00004

W

the 1995 killing of a federal grand jury investigation witness two days before her testimony. The female victim was in her early 40's and white, as are all the defendants. Cable was the triggerman who is said to have stabbed the victim to death. Dugger hired Cable after one David Day, the government's key witness, hired Dugger on behalf of a large-scale methamphetamine dealer, Tim Holloway. Dugger was in poor health (a recent liver transplant) and allegedly incompetent. Day received a 20 year sentence as a government witness.

Kauffman, Christopher

S.D. IA CR No. 97 Wolle

W

two carjackings/murders, a bank robbery and inter-state flight by two young, white step-brothers. Two white women were murdered in their homes and their cars were used in the robbery of \$70,000 from a bank. Each brother was a triggerman. The United States Attorney and defense counsel negotiated plea agreements shortly after the Attorney General required a capital prosecution.

Llamas, Tamara

E.D. NC CR No. 7:97-CR-63-1-H

W

a murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon.

McMahan, Jamie

S.D. IA CR No. 97 Wolle

W

two carjackings/murders, a bank robbery and inter-state flight by two young, white step-brothers. Two white women were murdered in their homes and their cars were used in the robbery of \$70,000 from a bank. Each brother was a triggerman. The United States Attorney and defense counsel negotiated plea agreements shortly after the Attorney General required a capital prosecution.

Defendant Name**D Ct Docket #****Race**

Pena, Richard

E.D. LA CR No. 97-CR- 145-ALL

H

involves multiple killings and the prosecution of an alleged cocaine drug lord (Richard) and his brother (Jhonny). Richard Pena, a 32 year old Dominican Republican foreign national, who became an American citizen in 1994, was a drug kingpin of a group that moved large amounts of cocaine and marijuana in Southeastern United States. Murder for hire is alleged as an aggravating circumstance. This group involved numerous family members and a New Orleans police officer. Richard Pena was charged with eight homicides, four approved as capital counts by the Attorney General. Pena, himself, committed two of the murders, and ordered the death of the others. A non-capital co-defendant was an ex-police officer who arrested one victim in August of 1995 and delivered him to Pena and two associates. His remains were found two months later. Pena pled guilty and received a sentence of life without release.

Rausini, Walder Pierre

N.D. CA CR No. 95-0319- SI

H

involves the murder of the head of a "Continuing Criminal Enterprise." Lance Estes, a 34 year old white male, had been involved in drug trafficking for many years and had taken over a CCE, whose head had gone to prison. Charged with involvement in this CCE, Estes worked out a deal as an informant for the government but continued to direct his drug enterprise. Rausini was alleged to be working as a "cook" in the Estes organization, converting methamphetamine into "ice." He ordered the murder of Estes in an effort to take over Estes' organization. A co-defendant shot Estes, whose body turned up after Labor Day 1995 in a dumpster in Oceanside with a single gunshot wound to the head. Rausini is also accused of ordering a second murder of another member of the of the CCE because of his plans to become a government informant. Another co-defendant was the killer in this murder. Rausini was 26 years old at the time of the murders with which he is charged and had no serious prior convictions. Murder for hire is alleged as an aggravating circumstance. The government did not seek the death penalty against Rausini's codefendants. Rausini is a Brazilian foreign national of mixed race. The victims are both white.

Riddle, Steven

D. CO CR No. 98-CR-196

W

two "super-max", Florence, Colorado inmates, who attacked two suspected snitches. One inmate, an ex-police officer, was murdered. Another inmate survived the attack. The stabbing was witnessed by prison staff who were assaulted when they tried to get co-defendant Riddle off the victim. The United States Attorney did not seek permission to ask for the death penalty but the Attorney General required a capital prosecution. Riddle negotiated a 168 month cap. Black agreed to plead to aggravated assault in return for a sentence of no more than 84 months. Black had a prior murder. Riddle had a record of crimes in and out of prison. Riddle was sentenced to 120 consecutive months.

Wakefield, Jimmy Ray

E.D. NC CR No. 7:97-CR-63-1-H

W

a murder-for-hire of an informant in a marijuana conspiracy. Llamas, a white female, allegedly ordered the killing of a drug informant. The triggerman was Wakefield. The drug informant was carelessly named in a warrant, and was murdered a month later. The marijuana conspiracy involved North and South Carolina, Texas and Oregon

Abeln, Rick

S.D. IL CR No. 98-30022- WDS

W

the 1997 murder of Debra Abeln in East St. Louis, Illinois, in front of her 12 year old son. Richard Abeln and co-defendant Guy Westmoreland were indicted for conspiracy to distribute marijuana and cocaine, as well as the killing of Mrs. Abeln. Mr. Abeln confessed to hiring Deandre Lewis through Westmoreland to kill his wife. It was alleged that Mrs. Abeln was killed to cover up drug trafficking. Deandre Lewis has been identified as the gunman. Lewis' motivation was said to be a drug debt. Westmoreland was initially not authorized for a capital prosecution, but after Abeln's guilty plea, Westmoreland and Lewis were charged in a superseding capital indictment. Murder for hire is alleged as an aggravating circumstance. All involved are Caucasian, except Lewis, who is African-American.

Rollack, Peter

S.D. NY CR No. S4 97 CR 1293

B

involves multiple killings - eight racketeering murders between 1994 and 1997 by a gang headed by Rollack called "Sex, Money and Murder" which later affiliated itself with "the Bloods." Rollack approved a Thanksgiving 1997 double killing and personally killed four others, including a witness to another homicide. One victim in the Thanksgiving shooting was thought to be a witness in a North Carolina drug enterprise prosecution against Rollack, but actually was not. Only Rollack was targeted, and authorized for, a federal capital prosecution. All involved were African-American, or Hispanic. On January 3, 2000, just before jury selection was to begin, the defendant entered a guilty plea in exchange for a life sentence. He was sent to "super-max," with severe restrictions on who he may communicate with.

Dean, Chris

D. VT CR No. 2:98M0021

W

a mail bomb which killed a 17 year old Vermont man and disfigured his mother. The bombing was motivated by an internet dispute involving the deceased's fraudulent behavior. All involved are white. The United States Attorney did not request that this be a capital prosecution, but the Attorney General required a capital prosecution. Main Justice disagreed. Both the defendant and his victim were white. Dean pled guilty in September of 1999 and was sentenced to life.

Santiago, Jose

S.D. NY CR No. 98-CR- 290

H

two- count RICO indictment charging murder in aid of racketeering. The defendants are members of the Latin Kings. Hector Colon put out a "terminate on sight order on the deceased." The victim had stabbed Colon after an argument over a girl. Santiago entered the victim's apartment alone, with a gun provided by another gang member, Angel Lugo, and shot the victim in front of his family, including two young children. Colon was killed in September of 1999 in a shootout with the FBI. The Attorney General required a capital prosecution against Santiago alone. The government first announced that Lugo (the superior who ordered the killing) would face the death penalty but decided to file a "notice" only as to Santiago. Santiago agreed to a 50 year sentence.

Defendant Name	D Ct Docket #	Race
Chong, Richard Lee Tuck	D. HI CR No. 98-00416 ACK	A
a defendant originally indicted in the State of Hawaii for murder and various firearms violations. He fled the jurisdiction. A federal prosecution under 18 U.S.C. §924(j), use of a firearm to commit a drug related murder, was filed. The 47 year old Chong has a lengthy record of convictions for serious offenses and a violent prison record, including sodomy/assault with an ice pick and starting a fire. He had only been recently released when he allegedly shot the victim over a \$100 drug debt. The defendant is Asian and the victim is Hawaiian. Chong entered a guilty plea and was sentenced to life in prison.		
Lane, Robert	D. MD CR No. L-98-73	B
a series of carjackings, culminating in a cross-racial murder where the 86 year old victim apparently resisted and was beaten with a hammer or lead pipe on the head and killed by Lane who had been released from prison after abducting a woman. Lane faced the death penalty but was allowed to plead guilty.		
Bullock, Joseph	E.D. VA CR No. 3:98CR150	B
involves multiple killings and another Richmond, multi-defendant, multiple murder, drug conspiracy prosecution ... this one involving four killings in 1993 and 1994. Two co-defendants, Hickman and Lightfoot, agreed to plead guilty before authorization was considered. Another co-defendant, Robert Lavelle Weeks, was not the target of a request to seek the death penalty and was not authorized for a capital prosecution.		
Glover, Cody	D. KS CR No. 98-10059-01-MLB	B
another Kansas Hobbs Act prosecution involving a robbery/murder in a convenience store. Glover, who is black, confessed to entering the store, demanding money and then attempting to execute the two white store clerks who did not resist, killing one employee and critically wounding a second. Co-defendant Mark Holley admitted he was to receive part of the robbery proceeds for being the getaway driver. Holley was not authorized for a capital prosecution but Glover faced the death penalty for use of a gun during a crime of violence, although the United States Attorney apparently did not request authority to seek Glover's execution. The Attorney General required a capital prosecution. Glover pled guilty in April 1999 and received a life sentence.		
Kee, Charles Michael	S.D. NY CR No. 98-CR-778	B
a Bronx gang member who attempted to extort money to repay a debt by keeping a female juvenile hostage. A few days later, the girl's boyfriend was murdered by a juvenile in Kee's presence. Kee was a "Bloods" gang leader, organizing juveniles to commit crimes. The United States Attorney did not request permission to seek the death penalty, but the Attorney General required a capital prosecution.		
Aiken, Ian Orville	S.D. FL CR No. 97-233-CR- GOLD	B
involves multiple killings and a racketeering indictment against a gang known as the "Moscow Posse," who engaged in acts of violence, including murder, robbery, kidnapping, witness tampering, narcotics trafficking and extortion. Ian Aiken, the kingpin, and Oliver Lyons were accused of murdering Derrick Christian in New York City on October 27, 1995. Roland Aiken, Daniel Aiken and Eric Morris are accused of gunning down Desmond LaTouch in a Florida parking lot the next day, at Ian Aiken's request. Aiken also faced state murder charges in Miami. (The Moscow Posse was being investigated by authorities since the massacre at the Taste of the Islands restaurant, where four people died and 18 others were wounded in a gang shootout in August of 1992.) It is alleged in aggravation that Aiken was involved in a total of four murders, an attempted murder, a burglary, a robbery and a kidnapping. There may have been as many as 15 homicides alleged. Only Aiken faced the death penalty.		
Burgett, James Harold	W.D. TN CR No. 98-20160- G	W
a witness killing. Burgett killed his ex-wife because she helped authorities arrest him for making pornographic tapes of his 3 year old daughter. When Burgett found out she secretly tape-recorded him, he shot and killed Diane Wilcox and wounded his 18 year old step-daughter while on bail awaiting a 27 months prison term for child pornography. State capital charges were dismissed although Burgett pled guilty in a separate statutory rape state case. Both Burgett and Wilcox are white. Burgett pled guilty and was sentenced to life in prison.		
Lawrence, Jonathan Huey	N.D. FL CR No. 3:98CR73 (RV)	W
an apparently motiveless murder on federal property. The defendants met while in a state prison mental health facility. The government's theory was that this was a thrill killing. Rodgers allegedly shot a man through a window a month later. All parties are white. The Attorney General required a capital prosecution. Both Lawrence and Rodgers pled guilty in exchange for the government's agreement not to seek the death penalty. Both subsequently received the death penalty in state court.		
Rodgers, Jeremiah Martel	N.D. FL CR No. 3:98CR73 (RV)	W
an apparently motiveless murder on federal property. The defendants met while in a state prison mental health facility. The government's theory was that this was a thrill killing. Rodgers allegedly shot a man through a window a month later. All parties are white. The Attorney General required a capital prosecution. Both Lawrence and Rodgers pled guilty in exchange for the government's agreement not to seek the death penalty. Both subsequently received the death penalty in state court.		

Defendant Name	D Ct Docket #	Race
Gomez, Edsel Torres	D. PR CR No. 98-72	H
involves multiple (seven) killings in a cocaine and heroin trafficking conspiracy. In the "Cayey Massacre," four men were tortured and murdered. Later, three other men were shot and killed in two incidents. Gomez, one of Puerto Rico's major drug dealers, agreed, in concert with another drug dealer, to eliminate various competitors who were trying to take over Gomez's market. Gomez was the only defendant authorized for a capital prosecution. Three co-defendants, including one accused of murders in 1991 and 1993, did not face the death penalty. Murder for hire is alleged as an aggravating circumstance. All persons involved are Latino.		
Nieves-Alonso, Heriberto	D. PR CR No. 97-284 (JAF)	H
a large scale drug conspiracy and two 1996 killings by Valle-Lassalle and one by the others in 1996. The second was a witness elimination -- the government witness was cut up with a machete. Murder for hire is alleged as an aggravating circumstance. The Attorney General required a capital prosecution against all four defendants. All involved are Hispanic.		
Clemente, Louis	M.D. FL CR No. 98-436 CRT 26B	H
involves multiple killings - the murder of two suppliers to whom Clemente owed \$35,000 for methamphetamine. The government had initially sought the death penalty against Clemente, and had said they would seek the death penalty against the two shooters, only one (Hernandez-Miranda) of whom was arrested. Duran and Krammer claim they were outside when the shooters went into the victims' house. The shooters disposed of the bodies in an orange grove. Clemente allegedly provided the bleach to clean the house and paid the shooters, who fled. Duran has a domestic battery conviction. Clemente has claimed that Duran, his uncle, is the main instigator of the murder.		
Cooper, Carl Derrick	D. DC CR No. 99-0266 (Green)	B
three charges of felony murder. Cooper, 29, confessed in writing to shooting three employees, 25, 24 and 18, in a failed robbery attempt of Starbucks Coffee Shop. Cooper claimed in his confession to police that he had a struggle with the shop's manager. She apparently was shot while attempting to flee after being unable to open the safe. Cooper was also arrested in connection with the 1996 wounding of an off-duty Prince George's County police officer during an attempted robbery. Cooper is black and two of the three victims are white. The government also alleged a 1993 armed robbery and murder of a security guard, three 1989 armed robberies, three 1996 armed robberies, a 1997 armed robbery, various conspiracies to rob and various shootings. The Attorney General required a capital prosecution.		
Friend, Travis	E.D. VA CR No. 3:99CR201	B
the carjacking of a Chinese truck driver, who was murdered by out-of-work African-American truckers, who wanted to make off with the truck and its cargo.		
A third brother, a juvenile, 15, as well as the mother and a girlfriend are also involved but do not face the death penalty. Both defendants pled guilty. Eugene may have been involved in a second homicide.		
Friend, Eugene	E.D. VA CR No. 3:99CR201	B
the carjacking of a Chinese truck driver, who was murdered by out-of-work African-American truckers, who wanted to make off with the truck and its cargo.		
A third brother, a juvenile, 15, as well as the mother and a girlfriend are also involved but do not face the death penalty. Both defendants pled guilty. Eugene may have been involved in a second homicide.		
Carpenter, Robert L.	W.D. TN CR No. 99-20155	B
a cross-racial carjacking case in a suburb of Memphis. The victim was a 63 year old white female and the carjacking occurred "in broad daylight at noon" at a Sonic "drive-in." The defendants were 18 and 19 and African-American. A third, uncharged defendant was a juvenile. The Carpenter brothers plead guilty during jury selection. They were tried in Tennessee state court and sentenced to life in prison.		
Carpenter, Antonio	W.D. TN CR No. 99-20155	B
a cross-racial carjacking case in a suburb of Memphis. The victim was a 63 year old white female and the carjacking occurred "in broad daylight at noon" at a Sonic "drive-in." The defendants were 18 and 19 and African-American. A third, uncharged defendant was a juvenile. The Carpenter brothers plead guilty during jury selection. They were tried in Tennessee state court and sentenced to life in prison.		
Kendall, Michael Robbie	N.D. MS CR No. 3:99CR102	W
the murder of an Ole Miss senior accountancy major in 1999. Lowery was shot at Puskus Lake. Others were in the line of fire.		
Llera-Plaza, Carlos Ivan	E.D. PA CR No. 98-362	H
involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and multiple (four) murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of carjacking a courier and stealing cocaine.		
A \$25,000 contract was allegedly offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings and the driver. The triggerman in the fourth killing is a principal government witness. The government seeks the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez. All involved are Hispanic.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Rodriguez, Victor	E.D. PA CR No. 98-362	H
involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and multiple (four) murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of carjacking a courier and stealing cocaine. A \$25,000 contract was allegedly offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings and the driver. The triggerman in the fourth killing is a principal government witness. The government seeks the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez. All involved are Hispanic.		
Acosta, Wilfredo Martinez	E.D. PA CR No. 98-362	H
involves a Puerto Rico/Philadelphia cocaine connection between 1996-1998 and multiple (four) murders for hire, three in Pennsylvania and one in Puerto Rico. Rodriguez allegedly ran the organization with a fugitive named Cacerez. Two victims were suspected of carjacking a courier and stealing cocaine. A \$25,000 contract was allegedly offered but an innocent victim was mistakenly killed in Puerto Rico. One suspect was located in Philadelphia and two Hispanic males, ages 29 and 17, were killed. The 17 year old was an innocent victim, the high school student nephew of the target. Later, the second target was located and killed. Martinez-Acosta, 21, allegedly did the shooting in the first three, on orders of the alleged kingpin Rodriguez. Llera-Plaza was allegedly the middle-man in arranging the killings and the driver. The triggerman in the fourth killing is a principal government witness. The government seeks the death penalty against Rodriguez in four killings, Llera-Plaza in three and Martinez-Acosta in two. Attorney General Ashcroft approved plea agreements for Llera-Plaza and Martinez-Acosta, specifying life sentences. Judge Pollak then declared a mistrial for Rodriguez. All involved are Hispanic.		
Stayner, Cary	E.D. CA CR No. CR-F-00- 5217 AWI	W
involves multiple killings - four homicides in two separate incidents in Yosemite National Park. Stayner, 37 and a motel handyman, confessed to the (intrastate) kidnapping, sexual assault and decapitation killing of a park naturalist. He also confessed to killing three sightseers, a mother and two teenage girls, five months earlier. There were initially arrests of ex- convicts for the killing of the sightseers. Stayner's brother was a highly publicized kidnap victim in 1972. All involved are white. He faces the death penalty in state court.		
Satcher, Steve	D. MD CR No. AW00-0105	B
domestic killing - the carjacking, interstate kidnapping and murder of the mother of Satcher's child. Satcher engaged the services of co-defendants Horton and Stancil for one-half kilogram of cocaine. They abducted the victim and took her from Maryland to North Carolina in the trunk of her car. She was strangled and beaten. Horton and Stancil doused the car with gasoline and ignited it. Murder for hire is alleged as an aggravating circumstance. All three defendants are African-American, as is the victim. Stancil became a government witness. Attorney General Reno refused a request to seek the death penalty against Horton. Attorney General Ashcroft approved a plea agreement to a life sentence.		
Pham, Trung Thanh	E.D. CA CR No. 00-CR-411-ALL	A
the throwing of a Molotov cocktail through a dining room window allegedly by Pham. One victim, Hien Tran, a 9 year old Asian female, was killed. Others were seriously injured. The target was a man who had an affair with co-defendant Lam's wife. Authorization for Lam was initially not sought or granted. The jury deadlocked at Lam's first trial. The government produced a new witness who said Lam ordered the firebombing. Attorney General Reno gave the go-ahead to seek the death penalty at a retrial, but a guilty plea was entered. Later, the government decided to seek the death penalty against Pham, who, along with two others, was allegedly paid to do the firebombing. Federal jurisdiction is based on the happenstance that an apartment building was bombed. Attorney General Ashcroft later approved a plea agreement with Trung Pham who received a life sentence with a possible Rule 35 reduction to 30 years. Tu Trong and Quac Pham did not face the death penalty. All involved are of Asian descent.		
Lallamand, Sienky	N.D. IL CR No. 00 CR 143	B
Mr. Lallamand is accused under 18 U.S.C. §2232(a) with constructing a pipe bomb and delivering it to the victim who was married to a woman with whom Lallamand was having an affair. The defendant and the deceased are African-American. Lallamand defrauded the deceased of \$200,000 using the victim's identification. A plea agreement was reached but the defendant withdrew. The Attorney General required a capital prosecution. Attorney General Ashcroft approved a plea of guilty with a life sentence. The victim was African-American.		
Wilson, Bryant Lakeith	W.D. TN CR No. 01-20041-DV	B
a bank robbery in which a 79 year old white woman was killed in front of her daughter. This was the last in a series of eight such heists from Houston to Memphis. The defendants are African-American. The Attorney General required a capital prosecution against Wilson, but then approved a plea agreement specifying a life sentence, the same agreement reached in state court.		
Shorter, Ramon Lori	W.D. TN CR No. 01-20041-DV	B
a bank robbery in which a 79 year old white woman was killed in front of her daughter. This was the last in a series of eight such heists from Houston to Memphis. The defendants are African-American. The Attorney General approved a plea agreement specifying a life sentence, the same agreement reached in state court.		

Race

B

Defendant Name

Millegan, Rufus Jerry, Jr.

shooting of a white woman at a secluded location on federal land. The victim was shot repeatedly with two different types of ammunition. There are signed confessions by both defendants. Millegan confessed that he committed the murder, along with McClure, both shooting the victim with their weapons. McClure wrote that he told Millegan they should "press her" about the robbery. The deceased was taken to a road on federal land in Beltsville, where both allegedly shot her. The defendants are black. The alleged motive was a belief that the victim had some involvement in the burglary of Millegan's apartment. The Attorney General required a capital prosecution, but then approved a plea agreement specifying a life sentence.

B

W.D. TN CR No. 01-CR-20247-ALL

Maxwell, William

bank robbery resulting in the death of a black female employee of Union Planters Bank. A security guard was also shot in the face by Johnson, but survived. The defendants are African-American. Haynes was a shooter. The state and federal government both sought the death penalty against Haynes and Maxwell but not against Johnson who may be retarded. A federal jury sentenced Haynes to life imprisonment. After this verdict, Attorney General Ashcroft reversed his position and approved a plea agreement specifying a life sentence for Maxwell.

FEDERAL CAPITAL DEFENDANTS WHO WERE FOUND NOT GUILTY OF THE CAPITAL CHARGE OR WERE INNOCENT

Defendant Name	D Ct Docket #	Race
Brown, Reginald	E.D. MI CR No. 92-81127	B
involves multiple killings - an Innocent gang member. After insisting for nearly two years he had murdered four people, including a child, the government dismissed capital murder charges against a Detroit man and began prosecuting a co-defendant for the same killing. The AUSA has claimed the gang was connected to "more than 50 murders."		
Crummie, Chedrick	S.D. FL CR No. 93-252-CR-UUB	B
two drug-related murders committed in the course of a Miami narcotics trafficking operation. The three defendants faced the death penalty on one of the homicides. Attorney General Reno authorized a capital prosecution in early 1994; trial began on September 18, 1995 and ended in an acquittal on the homicide counts on February 5, 1996. The government alleged that the defendants had intentionally shot an innocent female victim after the defendants kicked the door to her bedroom down while searching for a rival drug dealer who had ripped them off. This version, based on informant testimony, was contradicted by physical and eye-witness testimony. The defendants were convicted of non- capital drug trafficking charges.		
Mack, Edward Alexander	S.D. FL CR No. 93-252-CR-UUB	B
two drug-related murders committed in the course of a Miami narcotics trafficking operation. The three defendants faced the death penalty on one of the homicides. Murder for hire is alleged as an aggravating circumstance. Attorney General Reno authorized a capital prosecution in early 1994; trial began on September 18, 1995 and ended in an acquittal on the homicide counts on February 5, 1996. The government alleged that the defendants had intentionally shot an innocent female victim after the defendants kicked the door to her bedroom down while searching for a rival drug dealer who had ripped them off. This version, based on informant testimony, was contradicted by physical and eye-witness testimony. The defendants were convicted of non- capital drug trafficking charges.		
Rozier, Kevin Denard	S.D. FL CR No. 93-252-CR-UUB	B
two drug-related murders committed in the course of a Miami narcotics trafficking operation. The three defendants faced the death penalty on one of the homicides. Murder for hire is alleged as an aggravating circumstance. Attorney General Reno authorized a capital prosecution in early 1994; trial began on September 18, 1995 and ended in an acquittal on the homicide counts on February 5, 1996. The government alleged that the defendants had intentionally shot an innocent female victim after the defendants kicked the door to her bedroom down while searching for a rival drug dealer who had ripped them off. This version, based on informant testimony, was contradicted by physical and eye-witness testimony. The defendants were convicted of non- capital drug trafficking charges.		
McKelton, Antonio	E.D. MI CR No. 98-80348	B
a bank robbery in which an employee was killed while servicing an ATM machine. McKelton was serving a state sentence for the armed robbery of a jewelry store and was suspected in six other robberies at jewelry stores. McKelton's print was on the clip inside the gun. The black victim had fired one shot off as he dove to the ground. McKelton, also a black man, suffers from Hodgkin's disease. The defense and the prosecutor jointly petitioned the Attorney General's Committee to withdraw the death penalty request. The request was first denied but was eventually granted. The indictment was dismissed when additional evidence was uncovered.		
Alejandro, Joel Rivera	D. PR CR No. 99-044 (SEC)	H
intrastate kidnapping, killing and dismembering of a Rio Piedras businessman who may have been involved in the illegal numbers racket called "bolleta," after his family ignored a ransom demand and called the police. The accused allegedly belonged to a gang of kidnappers suspected in as many as 15 abductions. Alejandro was alleged to be the triggerman. Only Alejandro and Martinez were to face the death penalty, but the district court declared the death penalty unconstitutional in Puerto Rico. 106 F.Supp. 311 (D. PR 2000). However, this decision was reversed by the Circuit. 252 F.3d 13 (2002). Both capital defendants had prior local murder convictions. Both were acquitted at trial. All involved are Hispanic.		
Martinez, Hector Acosta	D. PR CR No. 99-044 (SEC)	H
intrastate kidnapping, killing and dismembering of a Rio Piedras businessman who may have been involved in the illegal numbers racket called "bolleta," after his family ignored a ransom demand and called the police. The accused allegedly belonged to a gang of kidnappers suspected in as many as 15 abductions. Alejandro was alleged to be the triggerman. Only Alejandro and Martinez were to face the death penalty, but the district court declared the death penalty unconstitutional in Puerto Rico. 106 F.Supp. 311 (D. PR 2000). However, this decision was reversed by the Circuit. 252 F.3d 13 (2002). Both capital defendants had prior local murder convictions. Both were acquitted at trial. All involved are Hispanic.		
Castillo, Mario	C.D. CA CR No. 99-83-(A)-DT	H
involves multiple murder charges against two co-defendants of Mariano Martinez who were approved for a capital prosecution while Martinez was on trial. Jacobo, 21, and Castillo, 22, were charged as the triggermen in a November 1998 triple slaying, allegedly by the Mexican Mafia, La Erme (Spanish for The M). Three men, one a drug dealer and two innocent bystanders, were killed in a Monticello autobody shop. After three months of trial, the government withdrew its notice of intent to seek the death penalty after the Court threatened to bar the testimony of two witnesses negligently not discovered or disclosed before trial. 18 U.S.C. § 3432. The witnesses testified but the jury acquitted both defendants. All involved are Hispanic. The trial lasted 6 months. Castillo and Jacobo were acquitted of murder.		

Defendant Name**D Ct Docket #****Race**

Jacobo, Gerardo

C.D. CA CR No. 99-83-(A)-DT

H

involves multiple murder charges against two co-defendants of Mariano Martinez who were approved for a capital prosecution while Martinez was on trial. Jacobo, 21, and Castillo, 22, were charged as the triggermen in a November 1998 triple slaying, allegedly by the Mexican Mafia, La Erne (Spanish for The M). Three men, one a drug dealer and two innocent bystanders, were killed in a Monticello autobody shop. After three months of trial, the government withdrew its notice of intent to seek the death penalty after the Court threatened to bar the testimony of two witnesses negligently not discovered or disclosed before trial. 18 U.S.C. § 3432. The witnesses testified but the jury acquitted both defendants. All involved are Hispanic. The trial lasted 6 months. Castillo and Jacobo were acquitted of murder.

Jones, Luke

D. CT CR No. 00-CR-238-ALL

B

six murders in two indictments and other attempted murders by the members of gangs called "The Middle," "Q & A Mob" or the "Batman Crew." The gangs dealt in cocaine, crack or heroin. Powell, Harris and Baldwin were charged in multiple (two) racketeering murders in 1996 and 1997. 18 U.S.C. §§ 1959 and 924(c). Luke Jones was charged in two murders in 1998 and 1999. The others were charged in one homicide. Luke and Lance Jones were found wearing bullet proof vest in a car in which several loaded weapons were found. Lance Jones is serving a 24 year federal prison term and Luke a 10-year sentence for being a felon in possession of a gun. All involved are African-American. The Attorney General required a capital prosecution against Luke Jones. The jury found Luke Jones not guilty of one murder and Judge Nevas granted a Rule 29 motion as to the other, finding that the second murder victim was not involved with a drug organization and did not pose a threat to Jones' drug enterprise, rather he was killed after a personal dispute.

Rice, Darrell David

W.D. VA CR No. 02-CR-26-ALL

W

the multiple murder of two hikers in Virginia's Shenandoah National Park by cutting their throats. The victims were found bound and gagged. According to Attorney General Ashcroft, who announced pursuit of the death penalty himself, Rice has said he hates women and enjoys assaulting the vulnerable and that the two women deserved to die because they were lesbians. Review of tape recordings indicate Rice said only that the government was portraying him that way. Rice is currently serving a 135 month sentence in federal prison for the 1997 attempted abduction of a female bicyclist in the park. Attorney General Ashcroft stated at a news conference: "We're inclined to prosecute hate crimes like this one, prosecute them to the fullest." All involved are white. Days before the October 2003 trial date the trial was postponed when the FBI "found a new hair" and also re-examined a hair linking Rice to the women and admitted there was no connection. The new hair did not come from Rice or the women. There is male DNA on both ligatures that did not come from Rice. Eventually, the prosecution was dismissed.

Lentz, Jay

E.D. VA CR No. 01-CR-150-ALL

W

interstate domestic violence and kidnapping resulting in death. The defendant lived in Virginia and his ex-wife was kidnapped from Maryland. Her body was never located. A bloody car was found in D. C. All involved are white. A government pretrial appeal involved statements by the defendant. 225 F.Supp.2d 672, aff'd, 2003 WL 253949 (4th Cir. (VA)). Lentz was convicted and the jury recommended a life sentence. However, the judge vacated the conviction for lack of any evidence of interstate kidnapping. A government appeal is pending.

FEDERAL CAPITAL DEFENDANTS CONVICTED OF A LESSER OFFENSE

Defendant Name***D Ct Docket #******Race***

Smith, Howard L.

E.D. VA CR No. 97-341-A

B

the stabbing death of a Lorton Correctional Center prisoner. The defendant was serving a 20-life sentence for a murder he committed ten years previously, at age 17. Lorton is the District of Columbia prison complex, but is located in suburban Virginia. After a one-week 1998 trial, a jury in Alexandria, Virginia, rejected first-degree murder charges and convicted Smith of second-degree murder, which is not a death-eligible offense. Although a number of Lorton murders have been prosecuted in federal court since passage of the 1994 Crime Bill, the Smith case was the first approved for capital prosecution. Smith was sentenced as a "career offender" to life without parole.

Thomas, Christopher

E.D. VA CR No. 99-477-A

B

another murder at the District of Columbia Department of Corrections facility in Lorton. The victim allegedly brought a shank to the fight and the defendant wrestled it from him and stabbed him three times. Thomas was convicted of second degree murder. All involved are African-American. This was Thomas' third murder conviction.

FEDERAL CAPITAL CASES WHERE THE DEATH PENALTY HAS BEEN REJECTED BY JURIES OR JUDGES

Defendant Name	D Ct Docket #	Race
Hutching, James Norwood	E.D. OK CR No. 1:92-032-S	W
two white and one Hispanic defendants were tried jointly in connection with the drug- related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise received life sentences from the jury. A wheelman, present on the scene, was sentenced to death, but that sentence was overturned on appeal. The victim was white.		
Molina, Ramon Medina	E.D. OK CR No. 1:92-032-S	H
two white and one Hispanic defendants were tried jointly in connection with the drug- related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capitally-charged "managers" of the drug enterprise received life sentences from the jury. A wheelman, present on the scene, was sentenced to death, but that sentence was overturned on appeal. The victim was white.		
Cooper, Alex	N.D. IL CR No. 89-CR- 580	B
two black Chicago gang members received life sentences for the cocaine-related murder of an informant after separate trials. The Government had offered one defendant, but not the other, a plea bargain prior to trial. 19 F.3d 1154 (7th Cir. 1994).		
Davis, Darnell Anthony	N.D. IL CR No. 89-CR-580	B
two black Chicago gang members received life sentences for the cocaine-related murder of an informant after separate trials. The Government had offered one defendant, but not the other, a plea bargain prior to trial. 19 F.3d 1154 (7th Cir. 1994).		
Pitera, Thomas	E.D. NY CR No. 90-0424 (RR)	W
involves multiple killings. A white Mafia contract killer, the only person with mob connections to face the federal death penalty, received a life sentence from a Brooklyn, New York jury after being convicted of seven murders, two of which qualified as capital crimes under 21 U.S.C. § 848(e). Several of the murders involved torture and dismemberment of the victims. 5 F.3d 624 (2d Cir. 1993).		
Villarreal, Reynaldo Sambrano	E.D. TX CR No. 9:91-CR4	H
two Hispanic defendants in Texas were sentenced to life imprisonment and 40 years, respectively, for the marijuana-related murder of a law enforcement officer after a joint trial. The sentencing jury found no facts legally warranting the death penalty. 963 F.2d 725 (5th Cir.), cert. denied, 113 S.Ct. 353 (1992). A third Hispanic defendant, Jesus Zambrano, was also initially approved for capital prosecution but received a sentence of 30 years after he pleaded guilty and testified for the government against the Villarreals.		
Villarreal, Baldemar	E.D. TX CR No. 9:91-CR4	H
two Hispanic defendants in Texas were sentenced to life imprisonment and 40 years, respectively, for the marijuana-related murder of a law enforcement officer after a joint trial. The sentencing jury found no facts legally warranting the death penalty. 963 F.2d 725 (5th Cir.), cert. denied, 113 S.Ct. 353 (1992). A third Hispanic defendant, Jesus Zambrano, was also initially approved for capital prosecution but received a sentence of 30 years after he pleaded guilty and testified for the government against the Villarreals.		
Johnson, Shaheem	E.D. VA CR No. 97-00314-A	B
involves multiple killings - five killings of African-Americans, four males, one female, all cocaine-related murders, two in Virginia (a supplier/witness and his girlfriend with Raheem Johnson as the triggerman), one in Maryland (drug supplier with both Raheem and Shaheem firing weapons), one in Philadelphia (supplier/witness with Raheem Johnson as the triggerman) and another "murder for hire" in New York (drug supplier hit ordered by both Shaheem and Raheem Johnson). The two lead defendants, brothers Shaheem and Raheem Johnson, were authorized for a capital prosecution. Trial began in Alexandria in November, 1998 and ended in life verdicts for both brothers.		
Johnson, Raheem	E.D. VA CR No. 97-00314-A	B
involves multiple killings - five killings of African-Americans, four males, one female, all cocaine-related murders, two in Virginia (a supplier/witness and his girlfriend with Raheem Johnson as the triggerman), one in Maryland (drug supplier with both Raheem and Shaheem firing weapons), one in Philadelphia (supplier/witness with Raheem Johnson as the triggerman) and another "murder for hire" in New York (drug supplier hit ordered by both Shaheem and Raheem Johnson). The two lead defendants, brothers Shaheem and Raheem Johnson, were authorized for a capital prosecution. Trial began in Alexandria in November, 1998 and ended in life verdicts for both brothers.		
Minerd, Joseph	W.D. PA CR No. 99-215	W
a case, 1999 New Year's Day arson resulting in the death of the defendant's girlfriend, her three year old child by another man and her fetus, the defendant's child. The ATF believes there was a pipe bomb as there was a shard of metal found in the deceased's exhumed body. All involved are white. Attorney General Ashcroft approved a plea agreement but the defendant backed out of the deal. 176 F.Supp. 424. 182 F.Supp.2d 459. 197 F.Supp.2d 272.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Henry, Arnold Mark	E.D. VA CR No. 93-CR-131	B
involves multiple killings. Three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capital-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).		
Moore, Todd	E.D. VA CR No. 2:93CR162	B
involves multiple killings. A black New York-based crack cocaine distributor was spared in the first and (to date) only judge-sentencing procedure. Attorney General Reno approved the death penalty in this case in 1994. Moore pled guilty to an indictment charging him with having ordered the murder of a member of his Newport News, Virginia drug organization. The government waived a jury for sentencing, and a sentencing hearing was held before the district court. One month later, the district judge declined to impose the death penalty, and sentenced Moore to life without possibility of release. The sentence was affirmed on appeal, 81 F.3d 152 (4th Cir. 1996) (mem.). At the trial of the admitted triggerman in the murder, Derek Kelley, Moore offered to testify as a government witness. However, the government declined to use Moore as a witness, and Kelley was subsequently acquitted of all charges and released.		
Oscar, Frantz	E.D. VA CR No. 93-CR-131	B
involves multiple killings. Three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capital-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).		
Oscar, Jean Claude	E.D. VA CR No. 93-CR-131	B
involves multiple killings. Three blacks, two brothers born in Haiti, another man born in Grenada, were accused of two killings of an African-American man and a woman in related incidents where the victims were suspected of stealing crack cocaine. A Norfolk, Virginia jury refused, in March, 1994, to impose the death penalty upon any of the three capital-charged defendants. Attorney General Reno authorized a capital prosecution in this case in 1993. Life sentences were affirmed on appeal. 82 F.3d 419 (4th Cir. 1996) (unpub.).		
Diaz, Walter	N.D. NY CR No. 94-CR-328	B
involves multiple killings. Two African-Americans on a drug-related crime spree were approved for capital prosecution by Attorney General Reno in April 1995. The spree involved the alleged drug-related murder of a white victim by two African-American defendants. Two additional cross-racial homicides were alleged in aggravation, one during the course of a robbery in New York City, another of an elderly lawyer in upstate New York. Trial began in 1995 and sentences of life were returned after a vote of 11 to 1 for life for Diaz and 11 to 1 for death for Walker.		
Moore, Dennis B., Sr.	W.D. MO CR No. 94-00194	W
recruited his associate (Wyrick) to kill a rival drug marijuana dealer. Murder for hire is alleged as an aggravating circumstance. Both the defendants and the deceased are Caucasian. In 1996, the jury deadlocked on the punishment for Moore, resulting in a life sentence.		
Nguyen, Phouc H.	D. KS CR No. 94-10129-01	A
the co-defendant of Bountaem Chanthadara was also involved in a Hobbs Act robbery/murder. A Wichita, Kansas jury voted to sentence the defendant to life imprisonment in 1996, following his conviction for a murder committed during a commercial robbery. Mr. Chanthadara was previously sentenced to death by a different Wichita jury.		
Walker, Tyrone	N.D. NY CR No. 94-CR-328	B
involves multiple killings. Two African-Americans on a drug-related crime spree were approved for capital prosecution by Attorney General Reno in April 1995. The spree involved the alleged drug-related murder of a white victim by two African-American defendants. Two additional cross-racial homicides were alleged in aggravation, one during the course of a robbery in New York City, another of an elderly lawyer in upstate New York. Trial began in 1995 and sentences of life were returned after a vote of 11 to 1 for life for Diaz and 11 to 1 for death for Walker.		
Nichols, Terry Lynn	D. CO CR No. 96-CR-68-M	W
the co-defendant in the Oklahoma City bombing case. At a separate trial following McVeigh's, a Denver federal jury failed to reach a unanimous finding on Nichols' alleged intent to kill, a legal requirement for imposing the death penalty. The same jury's guilt phase verdicts indicated that the government had failed to prove that Nichols intended a lethal attack on the Murray Building. He was sentenced in 1998 to life imprisonment and faces the death penalty in state court.		
Beckford, Dean Anthony	E.D. VA CR No. 3:95CR00087	B
involves multiple killings. Another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capital charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.		

Defendant Name**D Ct Docket #****Race**

Cazaco, Leonel

E.D. VA CR No. 3:95CR00087

B

involves multiple killings. Another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Dennis, Claude

E.D. VA CR No. 3:95CR00087

B

involves multiple killings. Another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Ingle, Trinity Edward

W.D. AR CR No. 6:96CR60022

W

two white teenagers charged with the robbery-murder of an elderly retired National Parks employee who was found shot and bound with tape near a hiking path in Hot Springs National Park, a federal preserve within the city of Hot Springs, Arkansas. Ingle was convicted of the murder in 1997 after a 6-day trial; two days later a Hot Springs federal jury unanimously sentenced him to life imprisonment. Paul was sentenced to death following a separate, eight-day trial. All involved are white.

Jones, Anthony

D. MD CR No. WMN-96-0458

B

involves multiple (six) killings: one in '94, four in '96, one in '97. Authorization was granted to seek the death penalty for three murders, including an allegation that Jones ordered his step-brother killed from jail because he feared he was about to become a government witness. Jones also ordered the murder, by the victim's own bodyguards, of a rival Baltimore drug dealer who had earlier attempted to arrange the murder of Mr. Jones. Numerous other homicides, attributed to Jones, were alleged in aggravation. Murder for hire is alleged as an aggravating circumstance. Jones was convicted in 1998, sentenced to life without release. Eight co-conspirators were involved in multiple murders but did not face the death penalty. Chapman, Hill and Ross were charged in at least 2 killings. Jones was sent to the "Control Unit" at "super-max," ADX in Florence, Colorado, where he is under severe communication restrictions for 10 years.

Ray, Quan

N.D. IL CR No. 96 CR 379

B

involves multiple killings and a "Gangster Disciple" enforcer. In 1997, a Chicago jury declined to impose the death penalty after convicting Mr. Ray of having murdered a fellow gang drug trafficker on orders of a Gangsters Disciples' higher-up, Darryl Johnson. Murder for hire is alleged as an aggravating circumstance. The jury found that no statutory aggravating factor had been established beyond a reasonable doubt, rejecting the government's allegation that the murder had been committed "after substantial planning and premeditation." Johnson was sentenced to death for the same and one additional murder.

Thomas, Richard

E.D. VA CR No. 3:95CR00087

B

involves multiple killings. Another New York - Richmond cocaine connection was uncovered which involved members of a Brooklyn gang, all African-American, who transported crack cocaine to Richmond, Virginia. The 32-count indictment charged five of the alleged members of the so-called "Poison Clan" with capital murder in six killings, two in 1988 and four in 1994. (Devon Dale Beckford, 33, identified by the FBI as a gang leader was not arrested until July, 1997.) After a seven-week trial, a jury declined to impose the death penalty on all four defendants: Dean Beckford, 32, Leonel Romeo Cazaco, 22, Claude Gerald Dennis, 28 and Richard Thomas, 22. Dean Beckford and Claude Dennis were found guilty of the 1998 double murder. (Dennis had previously been acquitted on these charges in state court in 1989.) Cazaco and Thomas were also convicted of a capitol charge. Thomas had been acquitted in state court on the one homicide count on which he was convicted in federal court.

Bobbitt, LaFawn

E.D. VA CR No. 97 CR 129

B

two defendants were charged with the fatal shooting of an bank teller during an attempted robbery of a Nationsbank branch in Richmond, Virginia. Both defendants and the victim are African-American. A security guard was shot and blinded during the robbery, but survived. Trial began in 1998. The jury opted against the death penalty for both defendants.

Holley, Marvin Lee

N.D. AL CR No. 96-B-0208-NE

W

the 1991 killing of an informant in a drug conspiracy prosecution who had been given a new identity and sent out of state. However, the government witness returned and was spotted at a flea market in Ft. Payne. The drug ring boss, Mr. Holley, and co-defendant Charles Holland are alleged to have kidnaped the victim (intrastate) and killed him with a hammer. Holley is also alleged to have attempted to arrange the killing of government witnesses from prison. Holley was sentenced to life in prison and is also serving several consecutive life sentences in state prison for drug trafficking. All involved are white.

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Jones, Rashi	E.D. VA CR No. 97 CR 129	B
two defendants were charged with the fatal shooting of an bank teller during an attempted robbery of a Nationsbank branch in Richmond, Virginia. Both defendants and the victim are African-American. A security guard was shot and blinded during the robbery, but survived. Trial began in 1998. The jury opted against the death penalty for both defendants.		
Kehoe, Chevy	E.D. AR CR No. LR-CR-97-243	W
involves multiple killings - the murder of a family of three (an Arkansas gun dealer, his wife and their 8 year old child) in the Fall of 1996 by white supremacists. Chevie Kehoe faced sentencing before the jury first and was sentenced to life imprisonment. Co-defendant Lee followed and was sentenced to death.		
O'Driscoll, Michael	M.D. PA CR No. 4:CR-01-277	W
the stabbing and killing of an inmate at USP - Allenwood in 1997. There were half a dozen correctional officers who witnessed the end of the stabbing. Both the defendant and victim are white.		
Dhinsa, Gurmeet Singh	E.D. NY CR No. 97-672 (S-3) (ERK)	I
involves multiple killings - a wealthy Indian businessman alleged to head a racketeering enterprise which killed two. Murder for hire is alleged as an aggravating circumstance.		
Al-'Owhali, Mohamed Rashed Daoud	S.D. NY CR No. S6 98 CR 1023	AR
alleged foreign national accomplices of Usama bin Ladin, purported to be the organizer of two bombings of American embassies in Africa. The August 7, 1998 bombings in Kenya and Tanzania killed 224 people (11 in Tanzania), including 12 Americans, and more than 5,000 people injured. Al-'Owhali is a 21 year old Saudi citizen who was arrested in Nairobi after the Kenya bombing. They are alleged members of al-Qaida, an international terrorist organization, led by bin Laden, a Saudi millionaire, who issued various "fatwahs" against the United States. Bin Laden and 7 others are fugitives. Al-'Owhali allegedly was ordered to create a diversion for the Kenya bomb by throwing grenades. Mohamed allegedly rented the house where the Tanzania bomb was made. The 12 dead Americans included 4 blacks, 4 whites and 1 Asian. The other victims were mostly black Africans.		
Finley, James A.	W.D. NC CR No. 4:98CR243	W
involves multiple killings - the murder of two campers at a national park by a young man with a history of drug abuse but no violence. The crime may have been a robbery/murder. All parties are white. Mitigation involved Finley's drug abuse and depression. The defendant was sentenced to life after an April 1999 trial.		
Gilbert, Kristin	D. MA CR No. 98-30044-MAP	W
the killing of four patients at the Department of Veterans Affairs, and the attempted killing of three others. Ms. Gilbert, 31, used epinephrine, a drug that can overstimulate the heart, on her patients. Federal prosecutors said Gilbert murdered one patient, a 41-year-old invalid, after asking a supervisor if she could "leave early if he died." All involved are Caucasian. The jury deadlocked and Gilbert was sentenced to life in prison.		
Tello, Plutarco	W.D. MO CR No. 98- 00311-01/05-CR-W-2	B
four foreign national Columbians charged in a drug related murder. The "kingpin", Hinestroza, was never arrested and may have fled to Columbia. Hinestroza and his gang sold cocaine in the Kansas City area. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison.		
Bass, John	E.D. MI CR No. 97-80235	B
involves multiple killings and eleven death eligible defendants who were charged in a four victim (continuing criminal enterprise) Detroit drug/murder case under 21 U.S.C. §848(a)(1)(A). Of the eleven, only Bass was chosen to face a federal capital prosecution. All involved are African-American. A pretrial appeal involved the issue of discovery of Department of Justice charging practices in capital cases. In a per curiam opinion, the United States Supreme Court reversed the order granting discovery. United States v. Bass, 122 S.Ct. 2389 (2002). John Bass and his brother Patrick allegedly started a drug gang called the "Dog Pound" (because members owned many pit bulls), which sold crack in Michigan and Ohio. John Bass is charged with arranging two murders - of his brother and a rival.		

Defendant Name**D Ct Docket #****Race**

Edelin, Tommy

D. DC CR No. 98-264

B

a drug conspiracy, racketeering, multiple murder CCE prosecution. Tommy Edelin faced the death penalty alone among many capital eligible defendants, including his father. Edelin, 30, was charged with ordering 14 murders and attempting to have another dozen killed during the 1990's, in his role as the so-called "drug kingpin" of the "1-5 Mob". Murder for hire is alleged as an aggravating circumstance. The gang was charged with the shooting of a D.C. police officer and in another incident in which three people were shot while attending a crowded neighborhood picnic. One victim was shot several times while returning from a prom with his girlfriend. Two teenagers were targeted by mistake on their way to a church Christmas Party. Edelin was acquitted of this double killing by co-defendant Bostick. Much of the violence stemmed from a turf battle with members of the "Stanton Terrace Crew," which is now essentially out of business after numerous members were killed or convicted of first-degree murder. Edelin was convicted of four murders, including paying a hit man to kill a 19 year old who alleged robbed an associate. 11 jurors deliberated 3 hours before voting for a life sentence. The capital charge was a conviction of murder for hire of a 14 year old who allegedly robbed an associate of Tommy Edelin. Edelin was born as a result of a brief sexual encounter to a convicted drug addict. He had an abusive, deprived, depraved childhood in a crime infested neighborhood. This was the first death penalty trial in the District of Columbia since the last execution in 1957. D.C. voters rejected the death penalty in 1992.

Haynes, Willis

D. MD CR No. PJM-98- 0502

B

involves multiple (two) killings - the January 1996 triple intrastate kidnapping/murder of three black females from D.C. Haynes has confessed three time, blaming Higgs the first two. A third defendant, Victor Gloria, also has confessed and will plead guilty as an accessory after the fact. The AUSA says he will seek permission to argue for the death penalty for Haynes and Higgs. They were involved in another shooting six weeks before. All involved are African-American.

Martinez, Mariano

C.D. CA CR No. 99-83-(A)-DT

H

involves defendants in one of three related multiple murder Mexican Mafia prosecutions. "Chuy" Martinez, 41, is a defendant in one indictment, and the target of a murder plot in another. There are a total of four murders charged and 13 conspiracies to commit murder charged. Three men, one a drug dealer and two innocent bystanders, were killed in a Monticello autobody shop. Martinez, head of a drug organization allegedly orchestrated the killing using a walkie-talkie. Max Torvisco, once Martinez's right hand man, worked a deal with the government. He admitted ordering 140 murders and planning to kill Martinez who had survived a 1997 assassination attempt. Wiretaps show Martinez ordering hits on numerous targets.

Lyon, Billy Joe

W.D. KY CR No. 4:99-CR-11-M

W

involves multiple killings - contract killing of men in Alabama and Kentucky. Lyon, 19, and co-defendant Charles Stewart, 54, were charged with conspiracy and murder for hire. Stewart and Richard Dorman, 62, were partners in an 18-month forged-check and fraud scheme, using the deceased's identity. Lyon and his deceased father, Stewart's nephew, were hired to murder James Norris in Kentucky. Norris was found under a bale of hay beaten to death in a barn behind his home. Lyon was also hired to kill James Nichols in Alabama, whose body was discovered in 1999 in a partially submerged van. Nichols' 85 year old mother was also in the van, but survived. Co-conspirator Dorman was kidnapped (interstate) and locked into the trunk of a car that was then run into the Green River in Henderson County. He survived to be charged as part of the conspiracy. The elder Lyon committed suicide to avoid apprehension. Stewart was arrested in the Spring of 2000 after appearing on "America's Most Wanted." Lyon faced the death penalty but was sentenced to life in prison after his jury was instructed that Stewart would not because the Attorney General took too long to file a notice of intent to seek the death penalty. A third bank fraud victim is missing and presumed dead. Lyon committed an unrelated fourth murder. All involved are white.

Tatum, Kenneth A.

E.D. TX CR No. 2:99 CR 5

B

involves multiple killings - three young black defendants, members of the "Crips" gang, involved in a series of robberies and three killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court. Smith was convicted of a botched 1999 bank robbery involving the fatal shooting of a 61 year old white female teller. A female bank manager was wounded. Tatum and Stephens kidnapped (intrastate) and robbed a used car dealership (a Hobbs Act count). The victim, a 63 year old retired minister was shot and killed. Tatum was also convicted of a 1998 slaying of a president of a bank. Stephens and Tatum abducted the 50 year old white male. Stephens died of a brain tumor before trial. Tatum and Smith received life sentences at separate trials after a change of venue. The victims were white.

Smith, Daymon

E.D. TX CR No. 2:99 CR 5

B

Involves multiple killings - three young black defendants, members of the "Crips" gang, involved in a series of robberies and three killings in East Texas. Stephens, 21, Smith, 20, and Tatum, 20, faced the death penalty in both state and federal court. Smith was convicted of a botched 1999 bank robbery involving the fatal shooting of a 61 year old white female teller. A female bank manager was wounded. Tatum and Stephens kidnapped (intrastate) and robbed a used car dealership (a Hobbs Act count). The victim, a 63 year old retired minister was shot and killed. Tatum was also convicted of a 1998 slaying of a president of a bank. Stephens and Tatum abducted the 50 year old white male. Stephens died of a brain tumor before trial. Tatum and Smith received life sentences at separate trials after a change of venue. The victims were white.

Garrett, Lemond

S.D. GA CR No. 4-99-133

B

two young death eligible defendants, ages 18 and 20, involved in a drug conspiracy, in which a long time federal informant was killed. Both defendants and the victim are African-American. The United States Attorney requested permission to seek the death penalty against Lamond. Savannah police arrested Lamond Garrett in March of 1999 for the shooting death of Joseph Smart, Sr., 52. DeLoach, the get-a-way driver, was convicted for killing his cousin outside a sports bar in December 1998, and sentenced to life in prison in state court. Joe Perry Garrett was not arrested until shortly before trial. He ordered the killing of the DEA informant who was wearing a bullet-proof vest when he was shot. The bullet pierced his side in an unprotected area. The Court set a deadline for the Attorney General's decision whether to seek the death penalty. The government failed to meet the Court's deadline as to Joe Perry and he did not face the death penalty.

Defendant Name	D Ct Docket #	Race
Mohamed, Khalfan Khamis	S.D. NY CR No. S6 98 CR 1023	AR
alleged foreign national accomplices of Usama bin Ladin, purported to be the organizer of two bombings of American embassies in Africa. The August 7, 1998 bombings in Kenya and Tanzania killed 224 people, including 12 Americans. More than 5,000 people were injured. Al-'Owhali is a 21 year old Saudi citizen who was arrested in Nairobi after the bombing. All are alleged members of al-Qaida, an international terrorist organization, led by bin Laden, who issued various "fatwahs" against the United States. Al-'Owhali was ordered to create a diversion for the Kenya bomb by throwing grenades. Mohamed rented the house where the Tanzanian bomb was made. The 12 dead Americans included 4 blacks, 4 whites and 1 Asian. The other victims were mostly black Africans. The Kenya bomb killed 213 and the second bomb eleven.		
Wills, Christopher Andaryl	E.D. VA CR No. 99-00396	B
a witness-elimination in Alexandria, Virginia. Wills, 33, an African American, lured the victim from suburban Virginia to Washington, D.C. by means of a phoney job advertisement. The victim disappeared and is presumed to have been murdered. The Afghan national victim had recently testified against Wills at a preliminary hearing on state burglary charges. Wills was permitted to represent himself. He filed a motion to dismiss and the Court ruled that Wills cannot be charged with the capital crime of interstate kidnapping leading to death because his victim crossed state lines voluntarily and alone. The 4th Circuit reversed. 2000 WL 1781402. The jury deadlocked and Wills was sentenced to life in prison. Wills, who has 5 other felony convictions, is also serving 14 years for an unrelated Baltimore carjacking.		
Sanders, Marcus	S.D. AL CR No. 98-0056-CB	B
the April 1999 murder of a witness in a federal drug prosecution two days before Sanders drug conspiracy trial. Sanders did not appear for trial. Sanders was alleged to be the triggerman and was the only defendant authorized for a federal capital prosecution, but he was sentenced to life in prison at a separate trial.		
Denis, Jose	S.D. FL CR No. 99-00714 CR (KING)	H
one capital eligible 924(c) count - a homicide occurring during a 1996 drug rip-off at Hialech motel. Everyone involved is Hispanic. Denis was the alleged triggerman. He had no prior criminal record. The defendant was attending Florida State University at the time of his arrest. The victim was allegedly tortured prior to his death. The court set, then extended, a deadline. 246 F.Supp.2d 1250.		
Gray, Kevin	D. DC CR No. 1:00CR00157	B
involves multiple killings - a Southeast Washington, D.C., gang, alleged to be connected to approximately 40 slayings. The indictment charges 31 murders. Murder for hire was alleged as an aggravating circumstance. The leader, Kevin Gray, 28, is charged with carrying out the slayings of 10 people. Members of this heroin and marijuana conspiracy allegedly gunned down rivals and people they thought might testify against them, catching victims by surprise at a gas station, a beauty salon and on street corners, sometimes in broad daylight. Three of the victims were killed because they were viewed as potential witnesses. Another victim was shot by mistake. The 158 count indictment alleges 10 attempted murders. Gang members allegedly took outside contracts as hit men. Gray is charged in 22 murders. He and Moore are the only defendants to face the death penalty. The victims were Hispanic and African-American.		
Moore, Rodney	D. DC CR No. 1:00CR00157	B
involves multiple killings - a Southeast Washington, D.C., gang, alleged to be connected to approximately 40 slayings. The alleged leader, Kevin Gray, 28, is charged with carrying out the slayings of 10 people. Members of this heroin and marijuana conspiracy allegedly gunned down rivals and people they thought might testify against them, catching victims by surprise at a gas station, a beauty salon and on street corners, sometimes in broad daylight. Three of the victims were killed because they were viewed as potential witnesses. Another victim was shot by mistake. The 158 count indictment alleges 10 attempted murders. Murder for hire was alleged as an aggravating circumstance. Gang members allegedly took outside contracts as hit men. Moore is charged in 11 murders. The victims were Hispanic and African-American. 2001 WL 1000694 (D. DC). 173 F.Supp.2d 1. 254 F.Supp.2d 1.		
Johnson, Coleman	W.D. VA CR No. 3:00CR00026	W
one §844(ii) count for allegedly leaving a pipe bomb in 1997 which killed his ex-girlfriend, who was eight months pregnant, to avoid the child support that he would have to pay. DNA indicates he was the father of the child the victim was carrying. All involved are white. 136 F.Supp.2d 553.		
Ealy, Samuel Stephen	W.D. VA CR No. 00-CR-104-ALL	W
another Petite policy case involving the April 1989 shotgun multiple murder of a family of three. Ealy avoided trial in state court in 1991 by a successful motion to suppress. A federal grand jury indicted Ealy and Church, charging them with two capital murders in the furtherance of a drug-trafficking enterprise and a third murder of a potential federal witnesses. They are charged with these killings while trying to rob one victim of \$30,000 that he was holding for a drug ring. The victims were white. 2001 WL 686954, 855894, 1661706. 151 F.Supp.2d 715. 163 F.Supp.2d 633, 2002 WL 229700, 273317, 376880, 1205035.		
Waldon, Carl	M.D. FL CR No. 3:00-CR-436-J25-TJC	B
involves a CCE-related murder. Sinclair was a narcotics detective and Waldon an uniformed patrol officer. Three drug dealers apparently implicated Sinclair in drug trafficking as part of a 5K1 deal. Waldon and Sinclair were charged with murder. Sinclair worked as a bank guard. He saw an Arab-American storeowner withdraw \$50,000 from the bank. Sinclair tipped Waldon who detained the victim on a pretext traffic stop and tried to rob him. The victim was strangled in the police cruiser, near a school in broad daylight. Two others were present, including Kenneth McLoughlin, who participated and testified for the United States. The Attorney General required a capital prosecution against only Waldon. The penalty phase was bifurcated and the jury deadlocked on whether the mental state threshold (intentional killing) or sole aggravating circumstance (pecuniary gain) was present.		

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Haskell, Carl	W.D. MO CR No. 00-CR-395-ALL	B
involves the sequel to the Peoples and Lightfoot trial in October of 1999, resulting in life sentences. The government's theory is that Peoples, on behalf of Lightfoot and himself, enlisted the services of hired killers, one of whom allegedly was Haskell, to do away with one Jovan Ross, a white male. Ross was Lightfoot's homosexual live-in lover. The pair lived in a house in KC. After a lover's quarrel, Ross informed on Lightfoot regarding robberies pulled by Lightfoot and Peoples in Nebraska and led police to a cache of blank certified checks stored in the crawl space under the Lightfoot/Ross home. Shortly after, Lightfoot was arrested, and while in jail received information about Ross' involvement. Not long after that, Ross ended up dead. Attorney General Ashcroft approved Haskell, the alleged triggerman, for a capital prosecution, but denied permission to seek the death penalty against co-defendant Barfield.		
Britt, L.J.	N.D. TX CR No. 00-CR-260-ALL	B
a Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for multiple (three) murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, also mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents. The Court set, then extended, a deadline for the approval of a capital prosecution. A plea agreement to a life sentence for co-defendant Robinson was rejected by the Attorney General. He was sentenced to death. The victims were Hispanic and African-American.		
Cooper, Billy D.	S.D. MS CR No. 01-CR-8-ALL	B
involves carjacking and multiple killings of two black victims who were attempting to buy about \$30,000 worth of cocaine and were ripped off and killed. Both African-American defendants confessed, blaming the other as the triggerperson. There was a post-mortem attempt to dismember (head and hands) and rebury the bodies. The Notice of Intent to Seek the Death penalty against Frye was dismissed as filed too late. Cooper's life sentence was affirmed. 2003 WL 21672845 (5th Cir.).		
Ostrander, Michael Paul	W.D. MI CR No. 01-CR-00218	W
slaying of a man found buried in a previously dug grave in the Manistee National Forest. The Ostrander brothers are charged with the August 2000 use of a firearm causing death during drug trafficking, involving marijuana and cocaine. The Attorney General required a capital prosecution.		
Ostrander, Robert Norman	W.D. MI CR No. 01-CR-00218	W
slaying of a man found buried in a previously dug grave in the Manistee National Forest. The Ostrander brothers are charged with the August 2000 use of a firearm causing death during drug trafficking, involving marijuana and cocaine. The Attorney General required a capital prosecution.		
Davis, Johnny	E.D. LA CR No. 2:01-CR-282-ALL	B
involves allegations of multiple killings (four) - 924(c) 2001 gun murders by a drug gang pushing heroin in a New Orleans Housing project. The alleged kingpin, Richard Porter, was convicted of one murder and did not face the death penalty. The enforcer for the group, Johnny Davis, was convicted of three of four murders. All involved are African-American. The government sought the death penalty against only Davis.		
Haynes, Aaron	W.D. TN CR No. 01-CR-20247-ALL	B
bank robbery resulting in the death of a black female employee of Union Planters Bank. A security guard was also shot in the face by Johnson, but survived. The defendants are African-American. Haynes was a shooter. The state and federal government both sought the death penalty against Haynes and Maxwell but not against Johnson who may be retarded. A federal jury sentenced Haynes to life imprisonment. After this verdict, Attorney General Ashcroft reversed his position and approved a plea agreement specifying a life sentence for Maxwell. 242 F.Supp.2d 540. 269 F.Supp.2d 970, 265 F.Supp.2d 914.		
Regan, Brian Patrick	E.D. VA CR No. 01-CR-405-ALL	W
a 20 year veteran of the Air Force who worked in the headquarters of the National Reconnaissance Office, charged with three counts of attempted espionage and one count of mishandling classified information. The government charged Regan of creating a "grave risk of death" to U.S. military pilots patrolling the no-fly zone over Iraq. Regan intended to sell Iraqi president Saddam Hussein secret details about American satellites. Prosecutors said Regan apparently used a form letter to solicit money from at least two foreign countries. Investigators said Regan told Hussein in a letter, "If I am caught, I will be imprisoned for the rest of my life, if not executed for this deed." Two of the charges carried the death penalty.		
Matthews, Lavin	N.D. NY CR No. 3:00 CR-269-ALL	B
murder during a CCE, motivated by a drug rip off. Another drug dealer was beaten to death. His marijuana and cash were stolen. The Attorney General required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who was found to be mentally retarded by both the defense and government experts. All involved are African-American.		
Dixon, Emile	E.D. NY CR No. 01-CR-389-ALL	B
Dixon is one of the leaders of the inter-state "Patio Crew" gang, charged with taking part in a July 26, 2002 murder of a witness and another murder. A government informant, Robert Thompson, 30, was machine-gunned to death in his car, and his brother was wounded. The main witness, the brother who survived, has admitted lying about Dixon. A superceding indictment was filed charging a 1992 drug-related murder. Attorney General Ashcroft required a capital prosecution overruling, press accounts indicate, his own review committee. Dixon is a foreign national, a Jamaican immigrant. The multiple victims were African-American.		

Defendant Name***D Ct Docket #******Race***

Tucker, Tebiah Shelah

N.D. NY CR No. 00-CR-269-ALL

B

murder during a CCE, involving a drug rip off. Another drug dealer was beaten to death. His marijuana and cash were stolen. The Attorney General required a capital prosecution against three defendants, later withdrawing the notice of intent as to McMillian, who was found to be mentally retarded by both the defense and government experts. All involved are African-American.

FEDERAL CAPITAL CASES RESULTING IN A SENTENCE OF DEATH

Defendant Name	D Ct Docket #	Race
Johnson, Corey	E.D. VA CR No. 3-92-CR-68	B
three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. Appeals by the three death-sentenced defendants were rejected. <i>United States v. Tipton</i> , 90 F.3d 861 (4th Cir. 1996). A petition for certiorari was denied by the Supreme Court in 1997, and a post-conviction petition pursuant to 28 U.S.C. § 2255 was filed in 1998.		
Roane, James	E.D. VA CR No. 3-92-CR-68	B
three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. Appeals by the three death-sentenced defendants were rejected. <i>United States v. Tipton</i> , 90 F.3d 861 (4th Cir. 1996). A petition for certiorari was denied by the Supreme Court in 1997, 520 U.S. 1253, and a post-conviction petition pursuant to 28 U.S.C. § 2255 was filed in 1998.		
Tipton, Richard	E.D. VA CR No. 3-92-CR- 68	B
three of four young black inner-city gang members in Richmond, Virginia, who were sentenced to death in 1993, for their roles in eleven crack-related murders. The trial of a fourth defendant, Vernon Thomas, was severed. Appeals by the three death-sentenced defendants were rejected. <i>United States v. Tipton</i> , 90 F.3d 861 (4th Cir. 1996). A petition for certiorari was denied by the Supreme Court in 1997, 520 U.S. 1253, and a post-conviction petition pursuant to 28 U.S.C. § 2255 was filed in 1998.		
Hammer, David Paul	M.D. PA CR No. 4-96-CR-239	W
a strangulation murder of a federal prison inmate by his cellmate. The defendant and the victim are white. Mr. Hammer was serving a 1200+ year Oklahoma state sentence at the time of the homicide, but had been incarcerated in the federal penitentiary at Allenwood, Pennsylvania. Mr. Hammer abandoned his direct appeal. 226 F.3d 229 (3d Cir. 2000). An execution date was set for November 15, 2000, but was vacated when Mr. Hammer decided to file a post-conviction action.		
Hall, Orlando C.	N.D. TX CR No. 4:94-CR-121-Y	B
the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. Webster is the first case in which a federal defendant has been sentenced to death after attempting to establish his ineligibility for the death penalty by reason of mental retardation. Hall's appeal was denied by the Fifth Circuit in 1998, 152 F.3d 381, and certiorari was denied in 1999. 526 U.S. 1117. Webster's appeal was also rejected in 1999. 162 F.3d 308. A post-conviction petition was denied.		
Webster, Bruce	N.D. TX CR No. 4:94-CR-121	B
the first approval of a death penalty prosecution under the 1994 Federal Death Penalty Act. Hall, and his co-defendant, Webster, both African-American, were charged in Fort Worth, Texas, with the abduction, sexual assault and beating murder of a 16-year-old black female whose older brother had allegedly stolen marijuana. In 1995, Hall was sentenced to death after the jury heard testimony from co-defendants who pled guilty and testified in return for leniency. Expert testimony suggested the victim was still alive when buried. After a separate trial, Bruce Webster was sentenced to death by a jury in 1996. Webster is the first case in which a federal defendant has been sentenced to death after attempting to establish his ineligibility for the death penalty by reason of mental retardation. Hall's appeal was denied by the Fifth Circuit in 1998, 152 F.3d 381, and certiorari was denied in 1999. 526 U.S. 1117. Webster's appeal was also rejected in 1999. Cert. denied 528 U.S. 829. Post-conviction petitions are pending.		
Battle, Anthony	N.D. GA CR No. 1:95 CR 528	B
a black prisoner with a history of psychiatric problems who was sentenced to death for the hammer-murder of an African-American guard in the Atlanta federal penitentiary. Mr. Battle was serving a life sentence for the murder of his wife when the killing occurred. In 1997 a federal jury rejected Mr. Battle's insanity defense and returned a death sentence after three hours' deliberation. Appeal to the United States Court of Appeals for the Eleventh Circuit was rejected in 1999. 173 F.3d 1433. A petition for writ of certiorari was denied. 529 U.S. 1022. A post-conviction petition pursuant to 28 U.S.C. § 2255 was denied on April 30, 2003. 264 F. Supp. 2d 1088.		
Johnson, Darryl Alamont	N.D. IL CR No. 96 CR 379	B
involves multiple killings and a "Gangster Disciple" drug conspiracy/racketeering/multiple murder case. Two homicides were charged, one of a government confidential informant. Co-defendant Quan Ray committed two murders on orders of Mr. Johnson. Four additional homicides were alleged in aggravation. Murder for hire is alleged as an aggravating circumstance. Ray was sentenced to life in prison at a separate trial. Johnson's jury recommended a sentence of death in 1997. An appeal to the Seventh Circuit was rejected in 2000. 223 F.3d 665. Certiorari was denied on October 1, 2001. 534 U.S. 829. Post-conviction relief was denied on March 12, 2003. 2003 WL 1193257.		

Paul is one of two white teenagers charged with the robbery-murder of an elderly white National Parks employee in Hot Springs National Park, a federal preserve within the city of Hot Springs, Arkansas. A Hot Springs federal jury unanimously imposed a life sentence on co-defendant Trinity Ingle on June 6, 1997. Paul's separate trial began on June 17, 1997, and ended with a death sentence on June 25, 1997. An appeal to the United States Court of Appeals for the Eighth Circuit was rejected in 2000. 217 F.3d 989. Certiorari was denied on October 1, 2001. 534 U.S. 1156. All involved are white.

Allen, Billie Jerome

E.D. MO CR No. 4:97 CR 0141 ERW (TCM)

B

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. Appeals were rejected by the Eighth Circuit. 247 F.3d 741 (2001). The Supreme Court remanded in light of Ring v. Arizona, 536 U.S. 953.

Barnette, Aquila Marcivicci

W.D. NC CR No. 3:97CR23-P

B

multiple murder including a domestic killing. Barnette confessed to murdering a motorist during a Charlotte, North Carolina carjacking. He drove the victim's car to Roanoke, Virginia, where he killed his former girlfriend. Barnette has a long history of domestic abuse of the second victim. The defendant and the female victim are black; the carjacking victim was white. A Charlotte, North Carolina jury imposed the death penalty in 1998. Two years later the appeals court ordered a new sentencing trial. 211 F.3d 803 (4th Cir. 2000). Barnette was again sentenced to death in 2002.

Holder, Norris G.

E.D. MO CR No. 4:97 CR 0141 ERW (TCM)

B

two black defendants charged with the fatal shooting of a white bank guard during a robbery. Attorney General Reno authorized the government to seek the death penalty on August 1, 1997. After separate trials, death sentences were returned on March 10, 1998 for Allen and April 3, 1998 for Holder. Appeals were rejected by the Eighth Circuit. 247 F.3d 741 (2001). Certiorari was denied. 124 S.Ct. 19.

Gabrion, Marvin

W.D. MI CR No. 1:99-CR-76

W

the disappearance of an alleged rape victim before Gabrion's trial, as well as the multiple disappearance of her 3 year old child and three men. The bound victim was found in a lake, part of federal land. The Attorney General required a capital prosecution in this 18 U.S.C. §1111 case. All involved are white.

Lee, Daniel Louis

E.D. AR CR No. LR-CR-97-243

W

involves multiple killings - a RICO prosecution of an organization supposedly intent upon starting a revolution. The capital crime was the murder of a family of three (an Arkansas gun dealer, his wife and their 8 year old child) in the Fall of 1996. The defendants may have believed the gun dealer was an ATF informant. The victims were killed by duct-taping plastic bags over their heads, handcuffing the three and throwing them in a river. The defendants and the victims are white. Co-defendant Chevie Kehoe was charged in two additional murders as well. The defendants were also charged with bombing the Spokane, WA city hall. Kehoe, older, whom some considered more culpable, was first sentenced to life by the jury at a 1999 separate penalty hearing. At that point the United States Attorney attempted to withdraw the request for the death penalty. The Attorney General was unavailable, so the Deputy Attorney General declined the request. Lee was then sentenced to death. The next year the District Court ordered a new sentencing hearing for Lee. 89 F.Supp.2d 1017 (E.D. AR). That decision was reversed by the Eighth Circuit. 274 F.3d 485 (2001). Petition for cert. denied 537 U.S. 1000 (2002).

Stitt, Richard

E.D. VA CR No. 2:98CR47

B

involves multiple killings - three homicides and other attempted homicides committed by co-defendants on Stitt's urging. Authorization to seek the death penalty was only granted by the Attorney General for Stitt. Four co-defendants did not face the death penalty. One of the shooters plead guilty to a life sentence. Stitt received a sentence of death in 1998 after a joint trial with three of the non-capital codefendants. He has a lengthy record of assaultive conduct. An appeal was rejected by the Fourth Circuit. 250 F.3d 878 (5/25/01). Certiorari was denied. 535 U.S. 1074 (2002).

Ortiz, Arboleda

W.D. MO CR No. 98- 00311-01/05-CR-W-2

B

four foreign national Columbians charged in a drug related murder. The "kingpin", Hinestroza, was never arrested and may have fled to Columbia. Hinestroza and his gang sold cocaine in the Kansas City area. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison. The Eighth Circuit affirmed. 315 F.3d 873 (2002). Petition for cert. denied 124 S.Ct. 920 (2003).

Sinisterra, German

W.D. MO CR No. 98- 00311-01/05-CR-W-2

B

four foreign national Columbians charged in a drug related murder. The "kingpin", Hinestroza, was never arrested and may have fled to Columbia. Hinestroza and his gang sold cocaine in the Kansas City area. The victim and his nephew (who sold cocaine for the gang) stole \$240,000 from them. The defendants tied up, interrogated, duck taped and shot both victims. The nephew lived, escaped and identified the defendants. Sinisterra shot and killed one victim. Ortiz or Tello shot the surviving victim. Sinisterra and Ortiz were sentenced to death. The jury deadlocked on punishment for Tello, and he was sentenced to life in prison. The Eighth Circuit denied relief. 315 F.3d 873 (2002). Petition for rehearing en banc denied 2003 U.S. App. LEXIS 1863.

Defendant Name	D Ct Docket #	Race
Higgs, Dustin	D. MD CR No. PJM-98- 0502	B
involves multiple (two) killings - the January 1996 triple intrastate kidnapping/murder of three black females from D.C. on federal land. Haynes, 20, confessed that he fired the shots. He said Higgs, 26, gave him the gun and told him to do it after an argument with the women. The defendants are African-American and were involved in another shooting six weeks before. Haynes' jury deadlocked and he was sentenced to life in prison. Higgs was sentenced to death by an all male jury at a separate, subsequent trial. The government suggested a witness killing motive at this trial and alleged Higgs plotted to kill a government witness and/or his family. He was already serving a 17 year sentence on a drug conviction. Appeal is pending in the Fourth Circuit. All involved are African-American.		
Vialva, Christopher Andre	W.D. TX CR No. W99CR070	B
Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. The Fifth Circuit rejected appeals. 299 F.3d 467 (5th Cir. 2002). Rehearing en banc was denied. 299 F.3d 467. Certiorari was denied. 123 S.Ct. 2572 (2003).		
Bernard, Brandon	W.D. TX CR No. W99CR070	B
Vialva, 19, Bernard, 18, and two juveniles, all with alleged gang affiliations. These African-Americans were convicted of a 1999 § 1111 carjacking/double homicide and robbery of a young white "church" couple. The bodies of the victims were found in the trunk of their car just inside the Fort Hood boundary, with gunshot wounds to the face and head. The vehicle had been set on fire. Authorities believe Vialva shot the victims. The Attorney General required a capital prosecution for Bernard. The Fifth Circuit rejected appeals. 299 F.3d 467 (5th Cir. 2002). Rehearing en banc was denied. 299 F.3d 467. Certiorari was denied. 123 S.Ct. 2572 (2003).		
Nelson, Keith D.	W.D. MO CR No. 99-CR-303-1	W
the intrastate 1999 kidnapping and murder of a ten year old girl, in violation of 18 U.S.C. §1201. Both the defendant and the victim are white. The Eighth Circuit affirmed in 2003. 347 F.3d 701. Petition for rehearing en banc and panel denied. 2003 U.S. App. LEXIS 26278.		
Jackson, Richard	W.D. NC CR No. 00-CR-74-ALL	W
a capital defendant in state court who pled guilty to second degree murder, intrastate kidnapping and rape of a 22 year old woman jogging Halloween morning in a Nation Forest. Jackson received a 25 - 31 years sentence in state court. He was charged in federal court after the North Carolina Supreme Court reversed his original death sentence and conviction, and suppressed his confession on Edwards grounds. Jackson was 31 years old. The victim was tied with duct tape to a tree on federal land in the Bend Creek Recreation Area off Blue Ridge Parkway, raped and shot one time. All involved are white. An appeal was rejected by the Fourth Circuit. 327 F.3d 273 (2003). Cert. denied 124 S.Ct. 566 (2003).		
Robinson, Julius Omar	N.D. TX CR No. 00-CR-260-ALL	B
a Fort Worth drug trafficking prosecution of the leaders of an Arlington-based drug ring responsible for multiple (three) murders. The first killing involved a 1998 shooting of an African-American, mistaken for the intended victim, in a car traveling on Cential Expressway. A second 1999 killing was of an Hispanic person, mistaken for the intended victim, his brother, who allegedly sold a fake kilo of cocaine to Robinson. Britt was the triggerman in the third 1999 killing of another drug dealer, a Mexican national, who had stolen 20 kilos from a Laredo drug kingpin. Robinson was following in another car. Britt and Robinson, African-American, both allegedly fired weapons in the first and second incidents. The Court set, then extended, a deadline for the approval of a capital prosecution. Attorney General Ashcroft rejected a plea agreement involving a life sentence. Co-defendant Britt was sentenced to life in prison at a separate trial.		
Sampson, Gary	D. MA CR No. 01-CR-10384-ALL	W
a series of carjackings, two in Plymouth County, Massachusetts, and one in New Hampshire on July 23 and 24, 2001. The defendant confessed. He also confessed to five North Carolina bank robberies. Sampson is accused of carjacking and stabbing to death a 69 year old man and abducting and killing a 19 year old college student. A separate state prosecution is pending in New Hampshire for the killing of a former city councilman. Sampson called the FBI before the killings but the call was dropped and then covered up. All involved are white. Sampson pled guilty. Memorandum opinion and order 2004 U.S. Dist. LEXIS 1527 (2/4/2004).		
Purkey, Wesley Ira	W.D. MO CR No. 01-CR-308-ALL	W
the 1998 interstate kidnapping (from Missouri to Kansas), rape and murder of a 17 year old high school girl, whose body was then dismembered and burned. Purkey is serving a prison sentence for another killing. Previously, Purkey was paroled after 17 years for shooting a man. Both victim and defendant are white.		
Fields, Sherman Lamont	W.D. TX CR No. 01-CR-164-ALL	B
Fields escaped from jail, where he was being held on federal weapons charges with the aid of a deputy sheriff in November 2001 and killed his girlfriend with a gun. He received 12 years on the gun charge. He allegedly carjacked a vehicle at gunpoint. Fields represented himself during the guilt phase of the trial. All involved are black.		

Defendant Name***D Ct Docket #******Race***

Mitchell, Lezmond

D. AZ CR No. 01-CR-1062-ALL

NA

murder on Navajo tribal land. All involved are Native American. The defendant and a juvenile got a ride from a woman and her 9 year old granddaughter, killed both and stole the car supposedly for use in an armed robbery. Each victim was stabbed at a separate location. In an attempt to hide the victim's identity, the hands and heads of the victims were removed. Attorney General Ashcroft required a capital prosecution against Mitchell under a carjacking theory -- although the Navajo tribe has not "opted in" to the federal death penalty.

Brown, Meier Jason

S.D. GA CR No. 02-M-53-ALL

B

the stabbing murder of a United States Postal Service employee during a robbery at a United States Post Office. Brown confessed and blood was found on his jacket and bike. The victim is white and the defendant is black. She was stabbed 10 times. There was a conditional plea agreement specifying a life sentence. Attorney General Ashcroft rejected a plea agreement and required a capital trial.

Federal Capital Cases Resulting in an Execution

<i>Defendant Name</i>	<i>D Ct Docket #</i>	<i>Race</i>
Garza, Juan Raul	S.D. TX CR No. 93-009	H

an Hispanic marijuana distributor was sentenced to death by a jury in 1993 in Brownsville, Texas, in connection with the murders of three other drug traffickers in the Brownsville area, two Hispanic and one Anglo. Garza ordered two murders and killed a third person himself. The government introduced 5 unadjudicated murders in aggravation, 4 were in Mexico. All but one victim were males. Attorney General Barr authorized the prosecution to seek the death penalty in December, 1992. Mr. Garza's death sentence was affirmed. *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995), and a petition for writ of certiorari was denied by the Supreme Court in 1996. Habeas relief was denied in 1998-1999. Garza's first two execution dates in 2000 were postponed by President Clinton pending a Department of Justice study of racial and geographic disparities in the federal death penalty, the second time on December 7, 2000 for 6 months. He was executed on June 19, 2001.

McVeigh, Timothy	D. CO CR No. 96-CR-68-M	W
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the 1995 Oklahoma City bombing in which 160 lost their lives, including 19 children. The President and Attorney General immediately announced that the death penalty would be sought, even before any suspects were identified. A Denver jury convicted McVeigh and voted to sentence him to death in 1997. Appeal to the United States Court of Appeals for the Tenth Circuit was quickly denied in 1998, 153 F.3d 1166, as was a post-conviction petition. 118 F.Supp.2d 1137 (D. CO 2000). Thereafter, Mr. McVeigh decided to abandon further appeal. His execution was scheduled for May 16, 2001, was delayed by the Attorney General upon the discovery of over 6,000 pages of FBI reports not disclosed to the defense. He was executed on June 11, 2001.

Jones, Louis	N.D. TX CR No. 6-95-CR-0015-C	B
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a 46 year old African-American -- a retired 22-year decorated Persian Gulf veteran--was convicted of the cross-racial abduction murder of a young white female soldier. The victim's family traveled to Washington to seek DOJ approval of the death request. The trial occurred in Lubbock on change of venue, after thousands of San Angelo residents signed petitions calling for the death penalty. The defendant was sentenced to death in 1995, the Fifth Circuit affirmed in 1998, but the United States Supreme Court granted review to consider issues relating to the jury's sentencing instructions in this first case conducted under the 1994 Federal Death Penalty Act. The Supreme Court affirmed the Fifth Circuit's decision in 1999. 119 S.Ct. 2090. A post-conviction action has been filed and denied, as was a successor petition raising a Ring issue. President Bush denied clemency the same evening as announcing the second Gulf War. Jones was executed the next morning, March 18, 2003.

Friday, April 4, 2003

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FORMER FEDERAL DEATH ROW INMATES

Defendant Name

D Ct Docket

Race

McCullah, John Javilo

E.D. OK CR No. 1:92-032-S

W

two white and one Hispanic defendants were tried jointly in connection with the drug-related intrastate kidnap/murder of a Muskogee, Oklahoma auto dealership employee. The two capital-charged "managers" of the drug enterprise, co-defendants Hutching and Molina, received life sentences from the jury, while the third defendant, McCullah (who, unlike the bosses, had been present at the killing) was sentenced to death in 1993. *United States v. McCullah*, 76 F.3d 1087 (10th Cir. 1996) ordered a new penalty hearing due to introduction of an involuntary statement and double counting of aggravating circumstances. Rehearing en banc was denied by a 6 to 6 vote, 87 F.3d 1136 (6/26/96), and the government declined to seek review in the Supreme Court. The government finally withdrew its request for the death penalty while McCullah's resentencing was pending. The victim was white.

Chandler, David Ronald

N.D. AL CR No. 90-CR-H-266-E

W

a white Alabama marijuana grower was sentenced to death for the murder for hire of a subordinate in his drug ring. The triggerman in the killing was granted immunity in exchange for his testimony, later recanted, that Chandler offered him \$500 for the murder. Insisting on his innocence, Chandler refused a pretrial plea offer of life imprisonment. Chandler's convictions and death sentence were affirmed by a panel of the Eleventh Circuit in mid-1993. 996 F.2d 1073 (11th Cir. 1993), cert. denied, 114 S.Ct. 2724 (1994). He filed a motion to vacate his convictions under 28 U.S.C. § 2255, and an execution date originally set for March 31, 1995, was stayed by the District Court. After several evidentiary hearings, 950 F.Supp. 1545 (N.D.AL1996), the District Court denied relief. 957 F.Supp. 1505 (N.D. AL 1997). A panel reversed, 193 F.3d 1297 (11th Cir. 1999) but the en banc court decided that Chandler received effective assistance of counsel in a 6-5 vote. 218 F.3d 1305. On January 20, 2001, President Clinton granted clemency.

Garza, Juan Raul

S.D. TX CR No. 93-009

H

an Hispanic marijuana distributor was sentenced to death by a jury in 1993 in Brownsville, Texas, in connection with the murders of three other drug traffickers in the Brownsville area, two Hispanic and one Anglo. Garza ordered two murders and killed a third person himself. The government introduced 5 unadjudicated murders in aggravation, 4 were in Mexico. All but one victim were males. Murder for hire is alleged as an aggravating circumstance. Attorney General Barr authorized the prosecution to seek the death penalty in December, 1992. Mr. Garza's death sentence was affirmed. *United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995), and a petition for writ of certiorari was denied by the Supreme Court in 1996. Habeas relief was denied in 1998-1999. Garza's first two execution dates in 2000 were postponed by President Clinton pending a Department of Justice study of racial and geographic disparities in the federal death penalty, the second time on December 7, 2000 for 6 months, until June 2001. He was executed on June 19, 2001.

Chanthadara, Bountaem

D. KS CR No. 94-10129-01

A

a "Hobbs Act" case, in which five defendants of Asian descent (Laotian and Vietnamese) were charged with the armed-robbery of a Chinese restaurant and killing co-proprietor Barbara Sun, in Wichita, Kansas in 1994. Federal jurisdiction was based on the Hobbs Act, 18 U.S.C. § 1951, prohibiting obstruction of inter-state commerce. The Attorney General's approval of this capital prosecution for Chanthadara and Phouc Nguyen was announced in 1995. It marked the first time that the Hobbs Act was used to federalize as a capital case a prosecution for murder committed during a commercial robbery. Chanthadara beat and shot the victim in an attempt to get her to open a safe the female proprietor could not. Nguyen was present. Chanthadara's jury recommended the death penalty in 1996. After a separate trial, Phouc Nguyen's jury sentenced him to life imprisonment. The Eighth Circuit reversed Chanthadara's death sentence on November 1, 2000. 230 F.3d 1237. He was sentenced to life in prison in 2002.

Davis, Len

E.D. LA CR No. 94-381

B

an African- American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury IN 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand the District Court dismissed the Notice of Intent to Seek the Death Penalty based on *Ring v. Arizona*.

Hardy, Paul

E.D. LA CR No. 94-381

B

an African- American New Orleans police officer, Len Davis, who was being investigated (and tape recorded) in a drug conspiracy case. Davis ordered the murder of a 32 year old mother of three, Kim Groves, who witnessed his beating of a witness in an unrelated incident. Groves had filed a brutality complaint against Davis. Paul Hardy, 27, carried out the killing. Murder for hire is alleged as an aggravating circumstance. Davis, then Hardy, were sentenced to death by a jury IN 1996, which heard sequential penalty phase presentations. Davis did not attend his. The Fifth Circuit reversed one of the convictions and ordered a new sentencing trial on the remaining convictions in 1999. 185 F.3d 407. On remand, the District Court dismissed the Notice of Intent to Seek the Death Penalty based on *Ring v. Arizona*.

Defendant Name***D Ct Docket #******Race***

Jones, Louis

N.D. TX CR No. 6-95-CR-0015-C

B

a 46 year old African-American -- a retired 22-year decorated Persian Gulf veteran--was convicted of the cross-racial abduction murder of a young white female soldier. The victim's family traveled to Washington to seek DOJ approval of the death request. The trial occurred in Lubbock on change of venue, after thousands of San Angelo residents signed petitions calling for the death penalty. The defendant was sentenced to death in 1995, the Fifth Circuit affirmed in 1998, but the United States Supreme Court granted review to consider issues relating to the jury's sentencing instructions in this first case conducted under the 1994 Federal Death Penalty Act. The Supreme Court affirmed the Fifth Circuit's decision in 1999. 119 S.Ct. 2090. A post-conviction action has been filed and denied, as was a successor petition raising a Ring issue. President Bush denied clemency the same evening as announcing the second Gulf War. Jones was executed the next morning, March 18, 2003.

McVeigh, Timothy James

D. CO CR No. 96-CR-68-M

W

the 1995 Oklahoma City bombing in which 160 lost their lives, including 19 children. The President and Attorney General immediately announced that the death penalty would be sought, even before any suspects were identified. A Denver jury convicted McVeigh and voted to sentence him to death in 1997. Appeal to the United States Court of Appeals for the Tenth Circuit was quickly denied in 1998, 153 F.3d 1166, as was a post-conviction petition. 118 F.Supp.2d 1137 (D. CO 2000). Thereafter, Mr. McVeigh decided to abandon further appeal. His execution was scheduled for May 16, 2001, was delayed by the Attorney General upon the discovery of over 6,000 pages of FBI reports not disclosed to the defense. He was executed on June 11, 2001.

Life, death and uncertainty

by Judge Michael Ponsor, Boston Globe, July 8, 2001

To the judge in charge, the murder trial of Kristen Gilbert offered an unsettling lesson - and inescapable conclusion - about the ultimate cost of the death penalty. Federal judges are not allowed to offer opinions, at least not in any significant way, on cases or issues that were, are, or might be before them. That is as it should be. But an excessive reluctance to say anything about the legal process, even once a case is over, can deprive the public of important information, and produce a suffocating silence about conditions at the front lines of our justice system. Lawyers do sometimes comment, of course, but they are combatants, foot soldiers with their own biases and limitations. Legislators and appellate courts make their pronouncements far from the blood and shrapnel of the trenches. Judges are often positioned to see what others cannot, and sometimes what they see is important.

Consider what follows a somewhat mud-spattered dispatch from an advantageous hilltop - the bench - not about who was right or wrong, but about how one particularly fateful campaign for justice unfolded. The trial was *United States v. Kristin Gilbert*. Presiding over this, the 1st death penalty case in Massachusetts in several decades, was the most complicated and stressful thing I've ever done (aside, perhaps, from raising teenagers).

The experience left me with one unavoidable conclusion: that a legal regime relying on the death penalty will inevitably execute innocent people - not too often, one hopes, but undoubtedly sometimes. Mistakes will be made because it is simply not possible to do something this difficult perfectly, all the time. Any honest proponent of capital punishment must face this fact. In saying this, I take no position on the death penalty per se. Our Constitution gives Congress the duty to weigh the costs and benefits of particular statutes, and I apply them as enacted. Should another capital case come my way, I will again preside, and perhaps find myself with the duty to order a defendant put to death. I accept this. Nor does my conclusion about the inevitable fallibility of this system mean that I believe the jurors in the Gilbert case erred either in finding the defendant guilty or in declining to impose the death penalty. I have no reason to think they did.

But the issue is not whether the Gilbert jurors got it right, or even whether the next 10, or 20, or 100 capital cases will go off without error. Eventually, in some courtroom somewhere, someone will get it wrong; the process is both too human and too complex to expect otherwise. And for some innocent defendant, that slip will be fatal. For all we know, it may already have happened. For those in the courtroom who decide the accused's fate - life or death - there is also a price to pay, but of a different and, of course, far lesser sort.

Kristin Gilbert, a 30-year-old nurse, was indicted in 1998 for murdering four of her patients and attempting to murder three others by injecting them with the heart stimulant epinephrine. Since she allegedly committed these crimes at a Veterans Affairs Medical Center, the federal death penalty statute applied. The fact that Massachusetts has no death penalty did not matter.

The method of execution proposed, like the defendant's *modus operandi*, was lethal injection. The 7 alleged victims were mainly elderly veterans with various ailments, men much loved by their families. The government's theory was never that these were mercy killings; only 1 of the 7 victims appeared to have been in immediate danger, or even in acute distress.

The facts charged were more lurid. Gilbert, the prosecutors said, injected her victims in order to trigger a "code," i.e., a medical emergency at which she could meet a security guard with whom she was having an adulterous affair. She was, in the words of the prosecutor, a "code bug" the way an arsonist is a "fire bug." If given clear proof beyond all possible doubt that someone committed despicable acts like these, few people would grieve if the murderer happened to be struck by a bolt of lightning, or suddenly died from, say, an undiagnosed heart condition. But trials seldom offer the luxury of absolute proof to a mathematical certainty - and when no smoking gun evidence exists, and when the mechanism for taking life is entirely in human hands, the task for jurors is complicated.

The defense argued that the government could not even prove that the veterans had died of foul play. Gilbert's medical experts - well-respected clinicians with excellent credentials - testified that all 7 may very well have suffered unexpected cardiac arrhythmias from perfectly natural or explainable causes. Even with considerable circumstantial evidence, including Gilbert's own apparently inculpatory statements, but no eyewitness testimony, the trial presented in large part a classic battle of experts.

The unpredictability of the courtroom was highlighted by the partial collapse of the government's toxicological case mid-trial. In his opening, the prosecutor promised that the jury would hear a nationally-renowned expert opine that post-mortem examination clearly revealed epinephrine poisoning. Halfway through the trial, he had to admit that on reexamination the results were inconclusive. His renowned expert, it seemed, had made a math error. In crude summary, those are the pertinent facts of the case. Here is the personal backdrop: As the trial date approached, a colleague from another court called to caution me about the level of stress I would be facing. He had had his own death penalty trial and had suffered a heart attack shortly afterward. It was a valuable warning.

After 17 years on the bench I do not consider myself particularly squeamish. I have had some tough cases: a drive-by shooting of a 12-year-old boy, a sale of heroin resulting in the customer's death, gang cases, gun cases, drug conspiracies. And although I do not say it with any pride, I have imposed many a horrendous sentence, gone home, eaten dinner, watched the Red Sox, helped with the homework, and slept soundly. You do your best, and you go on to the next case.

The Gilbert trial was different. Everyone had to devote a fair amount of attention just to staying healthy and reasonably rested. At a preliminary hearing, I ordered all counsel, only half humorously, to get at least 20 minutes of aerobic exercise four times a week, then followed my own order. A few days before trial I started having bad dreams, always featuring me either in the role of the executioner or the prisoner facing execution. Time and again, I found myself walking down a hall, breathless with terror at the imminence of death, with the shadows of the guards gliding alongside me. The executioner, a kindly looking, vaguely recognizable man, gazed at me, partly concealing the ax in the folds of his long black robe.

Jurors told reporters afterward that they had had their own nightmares. As the trial progressed, I got used to these dreams, and perhaps the jurors did too. Eventually the dreams ceased being frightening, and then stopped. I never thought I would preside over a death penalty case; most federal judges do not. It is unsettling to experience how quickly the unthinkable can become commonplace, then fade into part of a day's work. You get used to it. My reaction to the stress became almost embarrassing during jury selection. As potential jurors arrived for individual questioning in small groups, I would instruct them as follows: "You must understand, if the jury were unanimously to find that the death penalty should be imposed upon Ms. Gilbert," and here I nodded in her direction, "I would be required as the judge to sentence her to death. In other words, I could not change the jury's decision."

The jurors' rapt faces at this point always seemed to reflect their sense of the staggering responsibility they might have. Each time, you could hear a pin drop in the courtroom. The sheer effort of getting that passage out of my mouth affected me in a startling and ludicrous way. For four or 5 days, for the first and only time in my life, my grip on the word "decision" (a rather significant word for a judge) slipped badly. No matter how sturdily I braced myself as I sensed the word approaching, it started toppling out drunkenly as "desisson," "deshishon," or, most often, "deshizzon" - as in, "I could not change the jury's deshizzon." It was horrible. But, again, this passed, and by the end of the 1st week the unspeakable had become speakable - just ordinary words.

Apart from stress, the case presented almost endless logistical challenges, beginning long before trial actually commenced. For example, a death penalty case requires the appointment of at least 2 defense attorneys, one of whom is "death qualified," i.e., experienced in at least one prior capital case, and the assembly of a team of necessary defense experts. The shortage of qualified counsel in a state like Massachusetts with no death penalty, and the limitation on the hourly fee that can be paid (\$125 per hour, a fraction of what prominent lawyers receive) made this task daunting. Ultimately, three outstanding lawyers agreed, essentially, to abandon the rest of their practices (and to a great extent their personal lives) for about a year to prepare and then try the case. The experts appointed to assist the defense team included, at various times, 3 investigators, 2 toxicologists, a pathologist, 2 cardiologists, a nursing consultant, a jury consultant, a venue analyst, 2 mitigation specialists (experts commonly used in capital cases to gather evidence for the penalty phase), a statistician, a neuropsychologist, a behavioral psychologist, a psychiatrist, an endocrinologist, and a paralegal.

In the end I was confident that the defendant's team reasonably balanced the government's, so that the outcome would emerge from the merits, not from imbalance in firepower. To assure this, defense lawyers' fees and experts' costs eventually came to over \$1.6 million, all paid from public monies. In the months before trial, legal and logistical challenges continued to multiply. By my courtroom deputy's count, more than 250 motions were filed before and during the trial, some requiring many hours of hearings. The government took three of my rulings to the Court of Appeals; except for a minor point, I was affirmed. Some 1,500 jury summonses were sent out, and on Oct. 16, 2000, potential jurors - 800 of them - assembled at Springfield's Symphony Hall (rented because no room in our courthouse was large enough) to hear preliminary instructions and fill out a 15-page questionnaire. Then, for four weeks, hundreds of jurors came to court for follow-up questions. In the end, 12 jurors and six alternates (two alternates were eventually excused) would sit from Nov. 20,

2000, to March 26, 2001, receiving at first \$40, then \$50 per day plus 34 cents per mile for travel. The jurors' service was the most unparalleled demonstration of civic responsibility I have ever witnessed. How many of us could, or would, do it?

In the week before the trial, deputy marshals brought in from around the country arrived to assist our local deputies and court security officers. A pressroom and a portion of the courtroom were set aside for the media.

(The coverage, while generally balanced and accurate, was intense, particularly in the local media.) Throughout the 1st and larger portion of the trial, the guilt phase, both the government and defense took advantage of the extensive electronic resources in my courtroom. Video monitors and computer hookups allowed counsel to present evidence via a document presenter, CD-ROM, or a videotape.

This equipment, still rare in most courtrooms, made presentation of medical records, all of which had been electronically scanned, enormously easier. Direct testimony of the government's lead cardiologist unfolded with multicolored, animated diagrams of the heart, a tour de force presentation of expert testimony. The doctor, who testified for 5 days, was just one of roughly 70 witnesses. Over 200 exhibits were received into evidence, many of them medical records running to several hundred pages. The jury confronted concepts such as "accelerated ideo-ventricular rhythm," "right bundle branch blockage," and "contraction band necrosis." Unlike many judges, I allowed the jurors to take notes.

Given the technical nature of the testimony, some may have worried that none of the 12 jurors had a four-year college degree, though several had some college and three had worked in a medical area. In my own experience, formal education does not necessarily make for a better juror.

The trial, which began as the leaves were falling, marched on through the end-of-the-year holidays. There were three snow days, 4 sick days, and 3 medical emergency days; the defendant and 2 of the jurors got the flu, and 1 of the defense lawyers was briefly hospitalized with chest pains.

Then, on Feb. 21, evidence in the guilt phase concluded and the jury began its 1st-stage deliberations. The 12 days of deliberations were the longest by far I have ever waited through. Finally, the jury, looking utterly exhausted, returned its verdict: guilty on 3 counts of 1st-degree murder, and on several lesser charges.

Now the question was, would the jurors vote to sentence Kristin Gilbert to death?

The final, so-called penalty phase of the trial came down to a presentation by the government of aggravating factors and by the defense of mitigating factors. The jury was to weigh these in determining the sentence.

That may sound straightforward, but this portion of the trial was so strange - so unlike any legal proceeding I have ever been a part of that it is hard to describe.

In a typical criminal trial, including the guilt phase of a capital trial, the rules are clear and strict. But in the penalty phase of a death penalty trial, most of these rules are considerably looser. Both sides are given rather broad latitude to offer evidence about the defendant's background or character, or the nature of the crimes or their impact, that might affect the jury's decision.

What's more, the time-honored "beyond a reasonable doubt" standard does not apply; each juror is to decide whether death is - as the statute puts it - "justified," a term not defined in the statute or, as far as I know, anywhere else. With so few of the usual controls at hand, presiding over the penalty phase of a capital trial, from the judge's point of view, is like chuting the Colorado River on a tea tray.

It did not help that the journey was powered by the force of strong emotion. Probably the most dramatic evidence of an aggravating factor came from family members of the victims. Bravely, and occasionally tearfully, they took the stand one by one to show pictures of their sons, fathers, and brothers, and to speak, , sometimes in language that verged on poetry, of the enormity of their losses.

Never before have I understood so poignantly the devastating impact of a murder. It is hard to lose a loved one, harder to have had no opportunity to prepare for the loss, harder still to know that due to accident or mistake the loss was avoidable. But hardest of all - on a whole other level - is to perceive that the loss came through the deliberate viciousness of another person.

The victim family members delivered their testimony from a witness box no more than 10 or 12 feet from the defendant, passing by her as they walked to the stand almost close enough to touch, under the alert eyes of the deputy marshals.

Probably the most dramatic evidence of a mitigating factor came, in turn, from family members of the defendant. Gilbert's father took the stand, showing pictures of his daughter as an infant, toddler, girl, and young mother. Both the defendant's grandmothers tottered to the stand, recalling cookie baking and quilt making, describing the terrible impact Gilbert's death would have on them. As they spoke, Gilbert, just a few feet away, sobbed. Gilbert's former husband, who had appeared for the government during the guilt phase, submitted a statement now for the defense, expressing his deep concern about the injury his sons would suffer if their mother were executed.

The words of these witnesses were so profound that they almost became "testimony" in a religious sense. How does a judge modulate the impact of these voices fairly, and respectfully, knowing that they may determine whether someone lives or dies?

In the end, the jury's decision seemed to emerge from, or at least follow, a kind of loosely supervised psycho-legal community sharing. But this time the process did not produce unanimity.

After a day and a half, the jurors pronounced themselves deadlocked, and I imposed the only remaining possible sentence, mandatory life imprisonment without possibility of release. This phrase means what it says, by the way. Shortly after the trial, Kristin Gilbert was transferred to a high-security federal facility in Texas to be imprisoned until she dies.

It might be said that the unusual complexity of the Gilbert case made it more stressful and unwieldy than the ordinary capital proceeding. I do not know. The case had only one defendant, and she was of the same race and economic class, and spoke the same language, as most of the jurors. No headphones for translators.

The circumstances of the murders, while disturbing, were not gruesome or floridly violent in the usual sense. The lawyers on both sides were superb, and I had the enormous resources of the federal court. Unlike state judges, I did not have to confront the possibility of courtroom TV, which is banned in federal proceedings. Most of all, I was lucky. Logistically, the things that could have gone wrong were countless. Nothing did.

Did the jury get it right? I cannot say. I can say that no jury I have known ever showed more determination to do its job conscientiously. I have learned to live, at times, with a lack of absolute certainty. A few weeks before the start of the Gilbert trial, a defendant before me swore on the souls of his children that he was not the dealer who sold the super-pure heroin that killed a young drug user, even though 3 witnesses said he was. I sentenced him to life in prison without possibility of release.

To do my job, I must make my peace with possible error. Usually, part of this truce with myself comes from knowing that, as long as there is life, the worst of a bad mistake can at least hypothetically, and partially, be corrected.

Perhaps this is what some of the Gilbert jurors thought, too. On the verdict form three said that, while the evidence was strong enough to prove guilt beyond a reasonable doubt, it was too weak to justify the death penalty. As one of the potential jurors said during questioning, "Life is so precious, and death is so permanent."

In 1650, Oliver Cromwell, in a letter to the Church of Scotland, wrote "I beseech you, in the bowels of Christ, think it possible you may be mistaken." Some 300 years later, Judge Learned Hand observed that these words should be engraved over the portal of every courthouse and legislature.

I love our judicial system, and I am proud to serve in it. As I believe this trial demonstrated, no structure of law, anywhere or at any time, has tried so earnestly to protect the rights of those involved in it. But I have a hard time imagining anything as complicated as a capital trial being repeated very often, even by the best system, without an innocent person eventually being executed.

The simple question - not for me as a judge, but for all of us as citizens - is: Is the penalty worth the price?

CITY OF WASHINGTON

DISTRICT OF COLUMBIA

AFFIDAVIT OF RICHARD DIETER

I am currently the Executive Director of the Death Penalty Information Center (DPIC), in Washington, D.C. I have held my present position since 1992. DPIC is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. DPIC engages in research, provides in-depth reports, conducts briefings for journalists, and serves as a resource to persons working on the issue of capital punishment.

DPIC maintains an extensive archive concerning the practice of capital punishment in the United States. This archive contains newspaper articles, caselaw, court pleadings, reports, books, legislation, legislative history and testimony, and other materials relating to capital punishment. I routinely rely upon DPIC's archival information in preparing reports and answering questions regarding the death penalty.

In 1993, DPIC was contacted by Rep. Don Edwards, who was then Chair of the Subcommittee on Civil and Constitutional Rights of the U.S. House of Representatives, and asked to prepare a report on the subject of innocence and the death penalty with examples of people who had been freed from death row in recent years.

I prepared a draft of this report, basing my research on court opinions, news articles, and on conversations with attorneys associated with particular cases. The original list of 48 cases used as examples to demonstrate the risk of executing innocent persons contained in this report were primarily drawn from the research of Professors Michael Radelet (currently of the University of Colorado, Boulder) and Hugo Bedau (Tufts University). Portions of their research had been published in "Miscarriages of Justice in Potentially Capital Cases," 40 Stanford Law Review 21

(1987). This article contained many cases outside the scope of the report which DPIC prepared for Rep. Edwards, since it reported cases dating as far back as 1900, and included cases in which the defendant was not sentenced to death. A subsequent book, *In Spite of Innocence* (Northeastern University Press, 1992), by the same authors (along with Constance Putnam), was published about the same time as DPIC's report for the Subcommittee, and the research for that book was also a source of information for DPIC's work.

DPIC's draft report was submitted to Rep. Don Edward's Subcommittee and, with minor modifications, was published as a Staff Report of the Subcommittee in 1993. Subsequently, DPIC continued its research into cases of wrongful convictions from among those on death row and has maintained a list of such people.

Since DPIC has begun maintaining its own list, we have applied strict criteria for the cases that are added. The general conditions for adding a name to our list are that the person must have been sentenced to death; that their underlying conviction was finally overturned by an appropriate court; and that either the person has been re-tried and acquitted of all related charges, or that the government dropped those charges, with the final reversal occurring in 1973 or later. However, in three cases, the exoneration resulted from an absolute pardon by the governor.

To the best of my knowledge, all of the cases that have been added since the original list was prepared, and almost all of the original 48 cases, meet these criteria. Five cases, which were included and specially noted in the report issued by the Edwards's Subcommittee, did not fully meet these criteria in that either there was a plea to a lesser charge followed by immediate release from confinement, or a conviction on a charge other than murder at re-trial. No such cases have subsequently been added since DPIC began maintaining its list, which now numbers 101 cases. DPIC's list is now published on the organization's Web site.

Adherence to these criteria has led DPIC to exclude some cases that other researchers have included in their own lists. (See, e.g., M. Radelet, et al., "Prisoners Released from Death Rows since 1970 Because of Doubts About their Guilt," 13 Thomas M. Cooley L. Rev. 907 (1996); see also cases published by the Center for Wrongful Convictions in conjunction with their national conference in 1998 at Northwestern University.)

We believe that these criteria provide an objective basis for determining that a person's status of being innocent (i.e., not being proven guilty beyond a reasonable doubt) has been restored. To determine whether a case meets our standards, we consult court decisions, news accounts, attorneys involved with the cases, other experts, and reported research in this field.

All of the people on DPIC's list were exonerated in 1973 or later, though in six cases their conviction occurred prior to 1973. The year 1973 was chosen as a milestone because some states again began sentencing people to death in that year, following the passage of new death penalty laws in the wake of *Furman v. Georgia* (1972).

In 1997, DPIC published a new report, "Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent," as a follow-up to the Subcommittee's 1993 report. Sixty-nine cases were included in this report.

FURTHER AFFIANT SAYETH NAUGHT

A handwritten signature in black ink, appearing to read "Richard C. Dieter", written over a horizontal line.

Richard C. Dieter
Death Penalty Information Center
1320 18th St. NW, 2d Fl.
Washington, DC 20036

THE 32 POST HERRERA EXONERATIONS

1993

53. Kirk Bloodsworth Maryland Conviction 1984 Released 1993

Bloodsworth was convicted and sentenced to death for the rape and murder of a young girl. Despite alibi witnesses, he was convicted primarily on the basis of faulty eyewitness identification. When it was discovered that the state failed to disclose exculpatory evidence, Bloodsworth received a new trial, and was given a life sentence. He was released after subsequent DNA testing confirmed his innocence.

54. Federico M. Macias Texas Conviction 1984 Released 1993

Macias was convicted and sentenced to death for the murder of a man during a burglary. Macias was implicated by a co-worker, who in exchange for his testimony was not prosecuted for the murders, and by jailhouse informants. Post-conviction investigation by pro bono attorneys discovered substantial evidence of inadequate counsel. A federal district court ordered a new hearing finding that "[t]he errors that occurred in this case are inherent in a system which pays attorneys such a meager amount." Macias's conviction was overturned and a grand jury refused to reindict because of lack of evidence. (*Marinez-Macias v. Collins*, 810 F Supp. 782, 790 (W.D. Tex. 1991))

55. Walter (Johnny D) McMillian Alabama Conviction 1988 Released 1993

McMillian, a black man, was convicted for the murder of a white female after a trial that lasted only a day and a half. At trial, three witnesses testified against McMillian and the jury ignored a dozen alibi witnesses that testified McMillian was at a picnic. Although the jury recommended a life sentence, the judge imposed a sentence of death. Post-conviction investigation by the television show 60 Minutes revealed prosecutorial suppression of exculpatory information and perjury by the state's three witnesses. Macmillan's conviction was overturned by the Alabama Court of Criminal Appeals and prosecutors agreed case had been mishandled.

1994

59. Andrew Golden Florida Conviction 1991 Released 1994

Golden, a high school teacher in Florida, was convicted of murdering his wife. His conviction was overturned by the Florida Supreme Court in 1993. The court held that the state had failed to prove that the victim's death was anything but an accident. Golden was released into the waiting arms of his sons on January 6, 1994.

60. Joseph Burrows Illinois Conviction 1989 Released 1994

No physical evidence linked Burrows to the murder of William Dulin. The prosecution's two chief witnesses recanted their testimony against Mr. Burrows, and one of them confessed to the murder for which Burrows had been sent to death row. One of the witnesses said he had been coerced by prosecutors and police. Burrows was released in September, 1994, and the Illinois appellate courts have upheld the overturning of his conviction.

1995

63. Rolando Cruz Illinois Conviction 1985 Released 1995

Cruz was sentenced to death for the murder of 10-year-old Jeanine Nicarico. Another man, Brian Dugan, who had already pled guilty to two rapes and murders, including that of an 8-year-old girl, authorized his lawyer to tell the prosecutors that he killed Nicarico. Cruz was convicted at a second trial in 1990, at which Dugan did not testify. In July, 1994, the state Supreme Court overturned Cruz's second conviction. An assistant state attorney general resigned because she thought the evidence showed Cruz was innocent and thought it wrong to pursue the prosecution. Other law enforcement officials also protested the continued efforts to prosecute Cruz. Cruz was finally acquitted at his retrial in November, 1995. The judge did not even wait for the defense to put on its case before entering a directed verdict of not guilty. Three prosecutors and four law enforcement officers involved with the prosecution of Cruz and his co-defendant (see below) have been indicted for obstruction of justice in this case.

64. Alejandro Hernandez Illinois Conviction 1985 Released 1995

Hernandez was sentenced to death along with Rolando Cruz for the murder of Jeanine Nicarico in 1983. Hernandez was re-tried in 1990, but the trial ended in a hung jury. A third trial in 1991 resulted in a conviction and an 80 year prison sentence. The conviction was overturned by the Illinois Supreme Court in January, 1995. Only his own indirect statements, not any direct physical evidence, linked Hernandez, who is borderline retarded, to the killing. He was released on bond, and charges were subsequently dropped on Dec. 8, 1995. The man who has confessed to the murder of Jeanine Nicarico, and whose DNA has been linked to the crime, has not been charged in the case. The U.S. Dept. of Justice is considering an investigation into civil rights violations in this case.

1996

66. Verneal Jimerson Illinois Conviction 1985 Released 1996

Jimerson was sentenced to death in 1985 for a murder which occurred in 1978. The chief witness against him was Paula Gray, who has an IQ of 57. In her original story to the police, she did not mention Jimerson. Then she added his name to her account, along with three other names, including Dennis Williams (see #67). She later recanted her entire testimony, saying the police had forced her to lie. The original charges against Jimerson were dismissed, but they were resurrected seven years later when the police offered to drop some charges against Gray if she would implicate Jimerson. Gray's 50 year sentence was converted to 2 years probation. In 1995, the Illinois Supreme Court unanimously reversed Jimerson's conviction, because Gray had been allowed to testify falsely about her bargain. Jimerson was released on bond in early 1996, and charges against him were subsequently dropped.

67. Dennis Williams Illinois Conviction 1979 Released 1996

Williams was convicted, along with three others (including Verneal Jimerson, above), for the murder of a young couple in 1978. After spending 18 years in prison, Williams was released on June 14, 1996 because new evidence pointed to the fact that all four men were wrongly convicted. Much of the investigative work which led to the defendants' release was done by three journalism students. Recent DNA tests indicate that none of the four men were involved in the crime, and another man has confessed to the murder. Charges

80. Steven Smith Illinois Conviction 1986 Released 1999

Smith's conviction was overturned by the Illinois Supreme Court in 1999 because it was based on unreliable evidence. As a result, he is not subject to re-trial. Smith had been convicted of a murder outside of a Chicago tavern in 1985. The man killed was the assistant warden of the Pontiac Correctional Center. The Court said, "When the state cannot meet its burden of proof, the defendant must go free." Smith is the 11th death row inmate to be freed in Illinois since the death penalty was reinstated and the 9th since 1994.

81. Ronald Keith Williamson Oklahoma Conviction 1988 Released 1999

Ronald Williamson and Dennis Fritz were charged with the murder and rape of Deborah Sue Carter, which occurred in Ada, Oklahoma in 1982. They were arrested four years after the crime. Both were convicted and Williamson received the death penalty. In 1997, a federal appeals court overturned Williamson's conviction on the basis of ineffectiveness of counsel. The court noted that the lawyer had failed to investigate and present to the jury the fact that another man had confessed to the crime. The lawyer had been paid a total of \$3,200 for the defense. Recently, DNA tests from the crime scene did not match either Williamson or Fritz, but did implicate Glen Gore, a former suspect in the case. All charges against the two defendants were dismissed on April 15, 1999 and they were released. Williamson suffers from bipolar depression and has been hospitalized for treatment.

82. Ronald Jones Illinois Conviction 1989 Charges Dropped 1999

Jones was a homeless man when he was convicted of the rape and murder of a Chicago woman. After a lengthy interrogation in which Jones says he was beaten by police, he signed a confession. Prosecutors at his conviction described him as a "cold brutal rapist" who "should never see the light of day." (NY Times 5/19/99). Recent DNA testing revealed that Jones was not the rapist and there was no evidence of any accomplice to the murder. The Cook County state's attorney filed a motion asking the Illinois Supreme Court to vacate Jones's conviction in 1997. In May, 1999, the state dropped all charges against Jones. He is being temporarily detained pending another matter in a different state.

83. Clarence Richard Dexter Missouri Conviction 1991 Released 1999

Dexter was accused in 1990 of murdering his wife of 22 years. Police overlooked significant evidence that the murder occurred in the course of a botched robbery and quickly decided that Dexter must have committed the crime. Dexter's trial lawyer was in poor health and under federal investigation for tax fraud and failed to challenge blood evidence presented at trial. The conviction was overturned in 1998 because of prosecutorial misconduct. The defense then had the blood evidence carefully examined and showed that the conclusions presented at trial were completely wrong. The state's blood expert admitted that his previous findings overstated the case against Dexter. On the eve of Dexter's retrial in June, 1999, the prosecution dismissed the charges and Dexter was freed.

86. Steve Manning Illinois Convicted 1993 Reversed 1998 Charges dropped 2000

Steve Manning became the 13th inmate exonerated in Illinois, when prosecutors announced that they are dropping charges and no longer plan to retry Manning for the 1990 slaying of trucking company owner Jimmy Pellegrino. Manning was convicted and sentenced to death on the word of informant Tommy Dye, who testified that Manning twice confessed to him when they shared a jail cell. However, secret tape recordings of the two men's conversations, made at the request of the FBI, revealed no such confession, and Manning vehemently denied confessing. In exchange for his testimony, Dye received an 8-year reduction on his prison sentence on theft and firearms charges. Manning remains in prison on unrelated charges. (Chicago Tribune, 1/19/00)

88. Joseph Nahume Green Florida Convicted 1993 Acquitted 2000

Joseph Nahume Green was acquitted on March 16, 2000 of the murder of Judith Miscally. Circuit Judge Robert P. Cates entered a not guilty verdict for Green, citing the lack of any witnesses or evidence tying Green to the murder. Green, who has always maintained his innocence, was convicted largely upon the testimony of the state's only eye witness, Lonnie Thompson. In 1996, Green's conviction was overturned by the Florida Supreme Court, which held that Thompson's testimony was often inconsistent and contradictory, and that he not been fit to testify during Green's trial. (St. Petersburg Times, 3/17/00)

89. Earl Washington Virginia Conviction 1984 Commuted to life 1994 Absolute Pardon 2000

Earl Washington suffers from mental retardation. After he was arrested on another charge in 1983, police convinced him to make a statement concerning the rape and murder of a woman in Culpeper in 1982. He later recanted that statement. Subsequent DNA tests confirmed that Washington did not rape the victim, who had lived long enough to state that there was only one perpetrator of the crime. The DNA results combined with the victim's statement all but exonerated Washington. Shortly before leaving office in 1994, Governor Wilder commuted Washington's sentence to life with the possibility of parole. In 2000, additional DNA tests were ordered and the results again excluded Washington as the rapist. In October 2000, Virginia Governor Jim Gilmore granted Earl Washington an absolute pardon.

91. Frank Lee Smith Florida Convicted 1985 Cleared 2000

Frank Lee Smith, who had been convicted of a 1985 rape and murder of an 8-year-old girl, and who died of cancer in January 2000 while still on death row, was cleared of these charges by DNA testing, according to an aide to Florida Gov. Jeb Bush. After the trial, the chief eyewitness recanted her testimony. Nevertheless, Smith was scheduled for execution in 1990, but received a stay. Prosecutor Carolyn McCann was told by the FBI lab which conducted the DNA tests that: "He has been excluded. He didn't do it." Another man, who is currently in a psychiatric facility, is now the main suspect. (Washington Post, 12/15/00 (AP))

92. **Michael Graham** Louisiana Convicted 1987 Charges Dismissed 2000
93. **Albert Burrell** Louisiana Convicted 1987 Charges Dismissed 2000

After spending 13 years on death row, Michael Graham was released from the Louisiana State Penitentiary at Angola on December 28, 2000 after the Louisiana Attorney General dismissed charges against him and his co-defendant Albert Burrell. Burrell was released on January 3, 2001. Graham and Burrell were sentenced to death in 1987 for the murder of an elderly couple. Earlier this year, a judge threw out their convictions because of a lack of physical evidence and suspect witness testimony used at trial. Prosecutor Dan Grady acknowledged that the case was weak and "should never have been brought to [the] grand jury." During the trial, prosecutors withheld key information from the defense, failed to produce any physical evidence, and relied only on witness testimony, which has since been discredited. Dismissing the charges, the Attorney General's office cited a "total lack of credible evidence" and stated "prosecutors would deem it a breach of ethics to proceed to trial." Recent DNA tests proved that blood found at the victims' home did not belong to Burrell or Graham. The trial attorneys appointed to defend Burrell were later disbarred for other reasons. (Associated Press 12/28/00)

2001

94. **Peter Limone** Massachusetts Convicted 1968 Charges Dismissed 2001

Thirty -three years after being convicted and sentenced to death for a 1965 murder, Peter Limone's conviction has been overturned and the case against him officially dropped. The move came as a result of a Justice Department task force's discovery of compelling new evidence that Limone and his co-defendants Joseph Salvati, Henry Tamelo, and Louis Greco were actually innocent of the murder of Edward Deegan.

In 1968, all four were convicted and Limone was sentenced to die in Massachusetts' electric chair, but was spared in 1974 when Massachusetts abolished the death penalty and his sentence were commuted to life in prison. Salvati, who was released from prison in 1997 when the governor commuted his sentence, received word from prosecutors that they were dropping the case against him as well. Tamelo and Greco both died in prison.

At trial, the main witness against the four men was Joseph Barboza, a hit man cooperating with prosecutors, who later admitted that he had fabricated much of his testimony. The recently revealed FBI documents show that informants had told the FBI before the murder that Deegan would soon be killed and by whom, and a memorandum after the crime listed the men involved. Neither list included Limone, Salvati, Tamelo or Greco. (New York Times, 2/2/01 and Boston Herald, 1/21/01)

97. **Jeremy Sheets** Nebraska Conviction 1997 Charges dropped 2001

Jeremy Sheets was released after the U.S. Supreme Court declined to hear an appeal of a Nebraska Supreme Court decision overturning his conviction. Prosecutors then dropped the charges against him.

In September, 2000, the Nebraska high court unanimously ruled that a tape recording made by an alleged accomplice who committed suicide prior to the trial was the kind of statement deemed "highly suspect," "inherently unreliable," and hence inadmissible without the opportunity for Sheets to cross-examine. The statements (later recanted) were made by Adam Barnett, who was arrested for the 1992 rape and murder of the same victim as in Sheets' case. Barnett confessed to the crime and implicated Sheets. In exchange for

the taped statement, Barnett received a plea bargain in which he avoided a charge of first degree murder, did not have an additional weapons charge filed, and received a commitment for his safety while incarcerated. Barnett's statement was the key evidence used against Sheets at trial. (State v. Sheets, 618 N.W.2d 117 (Neb. 2000) and Associated Press, 6/12/01)

98. Charles Irvin Fain Idaho Conviction 1983 Charges dropped 2001

Charles Irvin Fain, a Vietnam veteran who spent over 18 years on Idaho's death row, has been freed with all charges dismissed. Although Fain always maintained his innocence, he was convicted and sentenced to death for the 1982 kidnapping, sexual assault and drowning of 9-year-old Daralyn Johnson. At his trial, the case against Fain rested on the opinion of an FBI forensics expert who testified that hairs found on the victim's clothing may have been Fain's. However, in March 2000, U.S. District Judge B. Lynn Winnill authorized funds for additional forensic testing of the hairs. The new tests concluded that the hairs found on the victim did not come from Fain. His conviction was set aside and prosecutors announced that he would not be retried. "Justice requires the action we have taken today," said David L. Young, the Canyon County prosecutor, indicating that the investigation for the killer would be re-opened.

Fain walked out of the maximum security prison in Boise on August 23. His conviction was also based on the testimony of two jailhouse informers, who claimed Fain had confessed in lurid details. (NY Times, 8/24/01 and Associated Press, 7/13/01)

2002

99. Juan Roberto Melendez Florida Conviction 1984 Released 2002

Juan Roberto Melendez spent nearly 18 years on Florida's death row before being exonerated of the crime for which he was sentenced to death. Melendez, who was born in Brooklyn, New York and raised in Puerto Rico, was sentenced to die in 1984 for the murder of Delbert Baker.

In December 2001, Florida Circuit Court Judge Barbara Fleischer overturned Melendez's capital murder conviction after determining that prosecutors in his original trial withheld critical evidence, thereby undermining confidence in the original verdict. The judge noted that no physical evidence linked Melendez to the crime. The state had used the testimony of two witnesses whose credibility was later challenged with new evidence. (Associated Press, 12/5/01) Following the reversal of the conviction, prosecutors announced the state's decision to abandon charges against Melendez. (Associated Press, 1/3/02)

100. Ray Krone Arizona Conviction 1992 Released 2002

Ray Krone was released from prison on Monday in Arizona after DNA testing showed that he did not commit the murder for which he was convicted 10 years ago. Maricopa County Attorney Rick Romley and Phoenix Police Chief Harold Hurtt announced at a news conference on Monday that new DNA tests vindicated Krone and that they would seek his release pending a hearing next month to vacate the murder conviction. Romley stated, "[Krone] deserves an apology from us, that's for sure. A mistake was made here. ... What do you say to him? An injustice was done and we will try to do better. And we're sorry."

Krone was first convicted in 1992, based largely on circumstantial evidence and testimony that bite marks on the victim matched Krone's teeth. He was sentenced to death. Three years later he received a new trial

but was again found guilty and sentenced to life in prison in 1996. Krone's post-conviction defense attorney, Alan Simpson, obtained a court order for DNA tests. The results not only exculpated Krone, but they pointed to another man, Kenneth Phillips, as the assailant. Prosecutor William Culbertson told Maricopa County Superior Court Judge Alfred Fenzel that the chances are 1.3 quadrillion to one that DNA found in saliva on the victim's tank top came from Phillips. (The Arizona Republic, 4/9/02).

AFFIDAVIT OF KEVIN McNALLY

I, Kevin McNally, being first duly sworn and cautioned according to law, do hereby state the following under oath, TO WIT:

1. I currently serve, along with David Bruck of South Carolina and Richard Burr of Texas, as Federal Death Penalty Resource Counsel, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal court. I have served in that capacity since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Defender Services Division of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated, and is checked for accuracy with defense counsel. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, **FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION** (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report "urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases" *Id.* at 50.

4. There were significant doubts about David Ronald Chandler's guilt, as documented in his clemency petition. http://www.capdefnet.org/htm_library/Chandler1.htm. This is why the President of the United States granted clemency. This is why the Attorney General of the United States recommended clemency. "At the attorney general's request, I commuted one death sentence because the defendant's principal accuser later changed his testimony, casting doubt on the defendant's guilt." Clinton, "My Reasons for the Pardons," *New York Times* (2/18/01).

5. Federal prosecutors have filed, not counting Chandler, at least 20 capital charges against the legally or factually innocent, including 7 defendants acquitted after the Attorney General declined to order a death penalty trial² and 7 acquitted after extensive scrutiny in a three level review process within the Department of Justice,³ producing a collective decision to file a "death" notice. Several Attorney Generals have sought the death penalty against 10 innocent citizens and prosecutor's have admitted that two or three of those were innocent. *United States v. Reginald Brown* (E.D. MI CR No. 92-81127) and *United States v. Antonio McKelton* (E.D. MI CR No. 98-80348).

6. So far, two inmates have been executed after review. One condemned inmate, Chandler, has been released from death row due to doubts about his guilt. 32 citizens have recently been condemned to die in federal court. Five death sentences have already been reversed and two of these individuals not resentenced to death. Only 15 of these death sentences have been affirmed on appeal, so serious error is committed thus far in approximately 1 in every 4 federal death penalty trials.

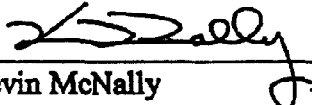
²*United States v. Derrick Kelley* (E.D. VA CR No. 93-162-N) (acquitted of all charges); *United States v. Michael Flanagan* (D. CO CR No. 96-357 M) (acquitted); *United States v. Donald George Brown* (E.D. NY CR No. 96-149 (S-5) (RJD) (acquitted of two counts and jury hung regarding co-defendant's involvement); *United States v. Franklin Moyler* (E.D. VA CR No. 96-00374-a) (acquitted); *United States v. Gary Benton* (E.D. KY CR No. 96-9) (acquitted in both state and federal court); *United States v. Anthony Urbistando* (S.D. NY CR No. 98-CR 566 (DLC)) (acquitted of murder) and *United States v. Ewan Bryce* (D. CT CR No. 99-CR-238-ALL) (acquitted).

³*United States v. Mack, et al.* (S.D. FL CR No. 93-252-CR-UUB)(three defendants); *United States v. Jacobo, et al.* (C.D. CA CR No. 99-83-(A)-DT)(two defendants) and *United States v. Ricky Lee Brown, Barbara Brown and Janette Able* (N.D. WV CR No. 1:98CR34) (two defendants acquitted, charges dropped as to the third).


7. Recently, former United States Attorney Michael Dettmer, of the Western District of Michigan, discussed "prematurely ... charging ... a defendant with a federal death penalty crime based only on circumstantial evidence, to then discover they had the wrong person. http://www.vera.org/publications/publications_5.asp?publication_id=161 Id. at 5. This was a reference to *United States v. John Flores Angiano and Tirzo Jorge Angiano* (W.D. MI CR No. 1:97-CR-23). Similar cases were *United States v. Jose Crecencio Martinez Vargas and Carlos Lopes* (W.D. OK CR NO. 99-CR-63-ALL) and *United States v. Angel Bernacett Cosme* (D. PR CR No. 99-346 (HL)).

7. The information detailed herein is maintained in the ordinary course of business of the Federal Death Penalty Resource Counsel Project, was not prepared in anticipation of its being used in litigation, and is accurate to the best of my knowledge, ability and belief.

Further, the affiant sayeth naught.


Kevin McNally
Federal Death Penalty Resource Counsel

30th Sworn to and subscribed before me by Kevin McNally, who is personally known to me, this day of May, 2002.


Notary Public

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DECLARATION OF RICHARD KAMMMEN

Comes now Richard Kammen, who being duly sworn upon his oath, says as follows:

1. I am an attorney admitted to practice law in the State of Indiana. I am also admitted to practice law before the following federal courts: the United States Supreme Court; the United States Courts of Appeals for the Sixth, Seventh, and Ninth Circuits; the United States District Courts for the Eastern District of Michigan, the Middle District of Tennessee, the Western District of Pennsylvania, the District of Alaska and, the District of Iowa and the Southern and Northern Districts of Indiana.

2. I have been active in death penalty cases since 1978. I have been active in defense of federal death penalty cases since 1989. I have been learned counsel in federal death penalty cases in the United States District Courts for the Eastern District of Michigan, the Middle District of Tennessee, the Western District of Pennsylvania, the District of Alaska and the District of Iowa.

3. I have written and lectured extensively on issues dealing with the defense of state and federal death penalty cases.

4. In approximately 1991, I was asked by the Honorable Avern Cohn, Judge of the United States District Court for the Eastern District of Michigan to accept appointment as Learned Counsel in a matter entitled *United States of America v. Reginald Brown*. I did accept such appointment and was Learned and Co-Counsel with Mr. Paul Curtis of Detroit, Michigan who was retained counsel.

5. Mr. Brown was charged with the commission four murders, committed in a single episode, that were alleged to be part of a drug conspiracy. One of the victims was a three year old girl. Throughout the proceedings, Mr. Brown insisted that he was innocent of the murder charges. Mr. Brown maintained that he was not in Detroit at the time of these homicides.

6. The case had been originally investigated by the City of Detroit Police Department. As our investigation progressed, we spoke with a number of City of Detroit police officers who indicated that their investigation had revealed that these homicides had not been committed by Mr. Brown but rather had been committed by Stacy Culbert. These officers also indicated that this information had been turned over to the F.B.I. and D.E.A. agents who investigated Mr. Brown.

7. We attempted to advise the Office of the United States Attorney and the Department of Justice that they were prosecuting the wrong individual for these homicides. These pleas were met with a surprising lack of interest inasmuch as we were trying to demonstrate that Mr. Brown was factually innocent of the charged homicides.

8. Approximately three months prior to trial a co-defendant whose name I recall as being William Wilkins was arrested. Mr. Wilkins had been a fugitive. Shortly after his arrest Mr. Wilkins agreed to cooperate with the government. As part of his cooperation he detailed information suggesting Mr. Curtis had transported money from Detroit to Atlanta to members of the drug conspiracy. Mr. Wilkins also told investigators that Mr. Brown was in fact innocent of the homicides and that the homicides had been committed by Stacy Culbert.

9. Based upon Mr. Wilkins' information the government filed a motion to disqualify Mr. Curtis from representing Mr. Brown. During that hearing, Mr. Wilkins testified regarding Mr. Curtis' conduct but also detail the information demonstrating that Mr. Brown was innocent of these murders.

10. At the conclusion of this hearing, Judge Cohn inquired of the United States Attorney how they could ethically continue to prosecute Mr. Brown in light of this information. The government suggested that the Court could consider the information about Mr. Curtis as true but could doubt the veracity of the information about Mr. Brown. Judge Cohn refused to engage such mental gymnastics. In response to questions posed by the court, the Assistant United States Attorney indicated that he did not have any authority from either his superiors or the Department

of Justice to dismiss Mr. Brown's murder charges. It is my memory that he indicated that he and his supervisors had spoken directly with the Honorable Janet Reno and the senior leadership of the Department of Justice. All of these individuals refused to authorize dismissal of Mr. Brown's murder charges.

12. In response to the statement that the U.S. Attorney's office did not have permission to dismiss the murder charges, Judge Cohn ordered that a transcript of the hearing be prepared, and that that transcript be reviewed by the Assistant Attorney General in charge of the criminal division of the Department of Justice. Judge Cohn then ordered that that person appear in court and explain to the Judge how the government could ethically proceed with the prosecution of Mr. Brown. Thereafter the charges were dismissed.

13. It is my belief that but for the courageous actions of Judge Cohn, the government would have persisted in its efforts to try Mr. Brown for a homicide of which he was completely innocent. It is my belief that the senior leadership of the Department of Justice was advised about the facts that indicated that Mr. Brown was innocent of these four murders. However, it is clear to me that but for Judge Cohn's persistence the prosecution would have proceeded with the trial of Mr. Brown on these charges. It is also my belief that in light of the horror of the crime Mr. Brown may well have received a death sentence.

14. Based upon this experience, it is my firm belief that the multiple layers of review that existed within the Department of Justice at that time and continues to exist today, do not prevent the prosecution and conviction of an innocent individual.

Further affiant sayeth not.



Richard Kammen

AFFIDAVIT

PENNY R. BEARDSLEE, deputy defender at the Federal Defender Office in Eastern District of Michigan, being first duly sworn, deposes and says:

1) Our office was appointed to represent Mr. Antonio McKelton, in November, 1998. We were appointed after the case had been certified by the Department of Justice as a death penalty case.


2) Mr. McKelton was charged in a two count Indictment with bank robbery involving death, 18 U.S.C. §2113(a), (d) and (e), and use of a firearm during and in relation to a crime of violence, 18 U.S.C. §924(c). The incident involved a 1997 shooting death of an armored car employee who was servicing an ATM. Neither of the two co-workers at the scene could provide sufficient information to identify the shooter. Antonio McKelton was arrested several months after the incident, after he was connected to a firearm that was matched via ballistics to the weapon used in the armored car shooting.

3) The following are some key facts provided through discovery: Local law enforcement found McKelton's thumb print on a clip that was inside a gun found during a hot pursuit chase of two jewelry store robbers. The jewelry store robbery occurred several months after the armored car shooting. The gun found after that robbery matched the ballistics of the gun involved in the armored car incident. The government had also located an individual who claimed to have seen McKelton shortly after armored car shooting. This individual claimed McKelton had scratches on his face and also claimed he had admitted shooting the armored car guard.

4) After our appointment, we asked the Department of Justice to de-certify the case based upon McKelton's medical condition. He had undergone a bone marrow transplant for his advanced Hodgkin's Lymphoma, and his doctor predicted he had a 50% chance of survival. By the end of summer, 1999, the Department of Justice granted our request and the case was de-certified.

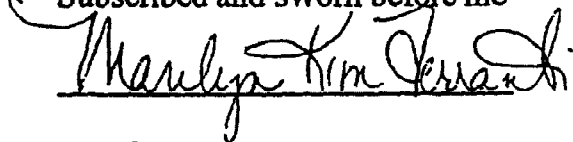
5) On July 31, 2000, the Government moved to dismiss the Indictment altogether after our office investigation located a witness who admitted he was present during the charged offense, and who exonerated McKelton and identified two other participants. The government then charged the two other participants, but the Department of Justice did not certify these defendants' cases as death penalty cases. One of these individuals was recently acquitted after a jury trial in the Eastern District of Michigan.

Further Deponent Sayeth Not


PENNY R. BEARDSLEE

Dated: May 28, 2002

Subscribed and sworn before me



MYRLYN KIM FERRANTI
NOTARY PUBLIC WAYNE CO., MI
NOT COMMISSION EXPIRES Aug 10, 2004

AFFIDAVIT

STATE OF WEST VIRGINIA
COUNTY OF OHIO, TO-WIT;

This day Jay T. McCamie personally appeared before the undersigned authority and after having been first duly sworn did depose and state as follows:

(1) I, Jay T. McCamie am a licensed attorney who is licensed in West Virginia and Pennsylvania and who has practiced law since 1984.

(2) I was the local counsel in a federal death penalty case in the Northern District of West Virginia which was a fifteen count indictment styled *U.S. v. Ricky Lee Brown, Barbara Brown, and Jeanette Ables, Criminal No. 1:98CR34*. All of the defendants were of the caucasian race and were each receiving either welfare, food stamps and/or or social security benefits.

(3) Ricky Brown was and is mentally retarded. At the time of his indictment he was receiving Social Security benefits for both his mental handicaps and also a defective heart valve condition. Those benefits were stopped when he was imprisoned pending trial. Those benefits are in the process of being restored.

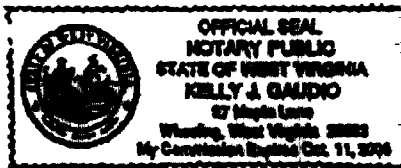
(4) Based upon the opinion of arson made by an insurance adjuster who was hired by the homeowner's insurance company who insured the Ricky Lee Brown's house and contents, an indictment was brought that alleged *inter alia* that the defendants conspired to kill their respective children, five children in total, by arson in order to collect insurance proceeds on both the house, owned by Ricky Brown and in which they all lived and also in order to collect insurance on three of the children of Ricky and Barbara Brown. Janet Ables' two children were not insured.

And further this affidavit sayeth not.

Jay T. McCamic
Jay T. McCamic

Taken, sworn to and subscribed before me on this 24th day of May

2002.



Kelly J. Gaudio
Notary Public of, in and for
said County and State

My Commission Expires:

10 / 11 / 05

AFFIDAVIT OF GARY GAUGER

Gary Gauger, being duly sworn upon his oath does hereby depose and state the following:

1. My name is Gary Gauger. I am one of 13 men in Illinois sentenced to death but later exonerated.

2. I was wrongly convicted in 1993 of murdering my parents, Morrie and Ruth, on their dairy farm, which my family had owned for decades.

3. My parents distrusted banks and kept large amounts of cash in their home. They had \$14,000 stashed in their kitchen. Thieves heard rumors of cash being kept in their home. They invaded my parents' farm, bludgeoned both in the head and slashed their throats. The attackers never found the money. They made off with only \$15 they found in my father's pocket.

4. I found my parents the next morning and called the police. The crime was random, committed by strangers and therefore the most difficult kind to solve. The nearest thing to a suspect the police could identify was me. I was convicted even though no physical evidence was found.

5. My conviction was obtained with testimony from a cell mate and an alleged confession, which was not recorded. The confession amounted to police coercing me, distraught and sleep-deprived, into considering a hypothetical scenario in which I killed my parents during a blackout.

6. Through an unrelated A.T.F. investigation into motorcycle gangs, it was discovered years later that two men in a bike gang killed my parents in an attempt to rob them.

7. The conviction harmed an already tenuous relationship with my three grown children and with my older brother, who became convinced I actually killed my parents. My former wife, who lives in Texas as do my children, threatened to file a wrongful death lawsuit on behalf of their children if only to keep me from seeing my daughter and two sons. The suit was never filed.

8. I know that, among the 13 exonerated death row inmates from Illinois, I am lucky. I was released after three years and six months. I was not sent to one of the state's two death-row prisons. I came out, for the most part, uninjured and with few physical scars. I had the support of my twin sister, Ginger, and childhood friend Sue Rekenhalter, whom I married after my release. And most of all, I had a home to return to and a means to make a living, raising and selling organic vegetables. A friend bought my father's shop and continues to fix and sell vintage European motorcycles from the same building. My sister Ginger sells imported rugs, crafts and furniture from the barn and the trailer where our mother's body was found.

9. Since my exoneration and release from prison, I retreat to the woods to cut trees, hole up in the barn to play my recorder or, when I truly do not want to be found, I sequester myself in the greenhouse.

10. I return to these spaces and from time to time take solitary refuge. My wife, Sue Rekenenthaler, knows not to bother looking for me. I have rediscovered some of life's graces, but I am still not fully comfortable with my world.

11. I love and miss my children but at the same time admit I have not always been the best father. I have only become less able to relate emotionally to people since my release from prison. That is what even a short time as a condemned man will do. I catch myself thinking about my conviction and time on death row. Something will come to mind and I might holler out loud. But, mostly I repress the memories; stuff it away.

12. I do not correspond with the friends I made in prison, Wolf, Spike and Turtle, because if I did, it would put me right back in that cell. I don't want to know what they're going through.

13. Prison life had its own distorted system of commerce and leisure. Most joined gangs as a matter of protection. I was one of the rare exceptions, left alone, I think, because I looked old and useless. Simple items were available for sale, at inflated prices, in the prison commissary - candy, cigarettes, radios. Contraband would find its way into the prison, passed by visitors or guards. What distinguished each inmate was how he chose to spend his time. Turtle collected autographs. Spike made moonshine out of packets of ketchup. And, Wolf dealt drugs. I embroidered, read the Bible, and sang in the cellblock choir, knowing the whole time someone else killed my parents.

14. I used to be indifferent about the death penalty. Now, I think it's used as a tool to obtain confessions, or intimidate mostly minorities into pleading guilty. I guess in my case, they figured they'd never get a better suspect than me.

FURTHER, AFFLIANT SAYETH NAUGHT.



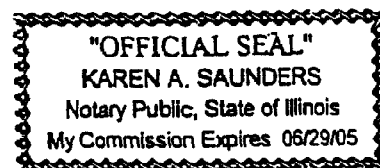
GARY GAUGER

Subscribed and sworn to before me by Gary Gauger on this 24th day of May, 2002.

Commission expires:

06/29/05

Notary Public, State at Large



MONTGOMERY COUNTY

STATE OF ALABAMA

AFFIDAVIT OF BRYAN A. STEVENSON

1. I am an attorney and the executive director of the Equal Justice Initiative of Alabama (EJI), a private, nonprofit organization that provides legal assistance to indigent defendants and prisoners in Alabama. I became involved in the case of Walter McMillian in the fall of 1988, as part of a broader effort to take on appeals for recently sentenced death row inmates.

2. Walter McMillian, a 45-year-old black man with no prior felony convictions, was wrongly convicted of capital murder on August 17, 1988 for the 1986 murder of Ronda Morrison, a 25 year-old white woman, in Monroeville, Alabama. He was sentenced to death by Monroe County Circuit Court Judge Robert E. Lee Key, Jr., on September 19, 1988, despite the fact that Mr. McMillian's jury had returned a verdict recommending a sentence of life without parole.

3. Mr. McMillian was a pulp wood worker who had dropped out of school when he was only ten years old so that he could work for his mother plowing fields. At the age of twenty, he started his own pulp wood company, and by the time of his arrest had built the company into a crew of four equipped with power saws, truck and a tractor.

4. On the morning of the crime, Mr. McMillian was eleven miles away, working on his truck with a friend while his sister conducted a church fundraiser at which she sold fried food to people who drove by Mr. McMillian's home. More than half-a-dozen black witnesses testified at trial that Mr. McMillian was working on his truck, but their testimony was simply ignored in favor of the implausible testimony of Ralph Myers, a white man with a lengthy criminal record.

5. Ronda Morrison was killed in a dry-cleaning establishment in the small rural community of Monroeville on a Saturday morning. More than six months passed without an arrest in the murder, despite enormous political pressure to find and convict the culprit. Following his arrest, Mr. McMillian spent thirteen of his fourteen months in pre-trial custody on Alabama's death row, where he was restricted as if he were a death row prisoner despite the fact that he had never been convicted.

6. The state presented no credible motive for the crime and offered no physical or forensic evidence linking Mr. McMillian to the murder. The state's case rested entirely on the testimony of Ralph Myers, a career criminal with several prior felony convictions and

charges pending against him in another capital murder case, who implicated Mr. McMillian and himself.

7. Mr. Myers's testimony was buttressed by two other unreliable witnesses who benefitted handsomely from their testimony. While in jail on burglary charges, Bill Hooks gave the police a statement claiming that he saw Mr. McMillian's truck outside the cleaners on the morning that Ronda Morrison was murdered. He was subsequently released from jail, had several fines for past and subsequent traffic offenses and other violations excused, and ultimately received more than \$5000 in reward money. Another self-proclaimed witness, Joe Hightower, received \$2000 in reward money for testifying that he also saw Mr. McMillian's truck in front of the cleaners. Both men identified the truck as a "low-rider", despite the fact that Mr. McMillian had not modified his truck to sit low to the ground until months after the crime. We later discovered that the state police had taken Mr. Hooks to inspect Mr. McMillian's truck before he made his statement.

8. We continued to investigate Mr. McMillian's case even after the Alabama Court of Criminal Appeals and the Alabama Supreme Court denied him relief. In August of 1991, we were contacted by Ralph Myers, who informed us that he had been pressured by law enforcement officers to testify falsely against Mr. McMillian. When we investigated Mr. Myers's admission, we discovered that the state had concealed statements Mr. Myers made to law enforcement officers, state doctors, and other inmates in which he insisted that Walter McMillian was not involved in the crime, and that he was being coerced into framing an innocent man for murder.

9. It took four and a half years of litigation and thousands of hours of investigation to free Mr. McMillian after he was wrongly convicted in merely two days.

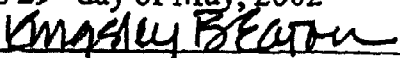
10. Mr. McMillian and I made statements to the United States Senate Judiciary Committee in April of 1993. I have attached these statements to this affidavit, and invite the court to examine them for a more detailed summary of these events.

I hereby swear under penalty of perjury that the foregoing is a true and correct statement.

Dated this 29 day of May, 2002.


Bryan A. Stevenson

Sworn to and subscribed before me
this 29th day of May, 2002


Notary Public
My Commission expires: 5/18/05

March 3, 1993, Wednesday

HEADLINE: Alabama Releases Man Held On Death Row for Six Years

BYLINE: By PETER APPLEBOME, Special to The New York Times

Walter McMillian walked out of a courtroom here today a free man after prosecutors conceded that he had spent six years on Alabama's Death Row because of perjured testimony and evidence withheld from his lawyers. Whether he was also put there for being a black man who violated the racial and sexual taboos of the small-town South is only one of the issues swirling around a case that has evoked not only distinctly Southern but also far broader questions of race and justice. Almost everything about Mr. McMillian's conviction in 1988 for the shooting death of an 18-year-old white female store clerk now seems extraordinary. From the start, the case was enveloped in a volatile mixture of race and sex stemming from Mr. McMillian's involvement with a white woman. Mr. McMillian, who is 46 years old, was locked up on Death Row even before he was tried. The state built a case on suspect testimony and withheld crucial evidence that called that testimony into question. In the end, it was a decision by the trial judge, Robert E. Lee Key Jr., to treat Mr. McMillian as harshly as possible, that allowed Mr. McMillian to win his freedom. If the jury's sentence of life in prison without parole had been left in place, Mr. McMillian might have been another forgotten black inmate in an Alabama prison. But Judge Key overruled the jury and condemned Mr. McMillian to die in the electric chair. Because of the death sentence, Mr. McMillian's case was vigorously appealed, and eventually overturned.

Lessons to Learn

"I think everybody needs to understand what happened because what happened today could happen tomorrow if we don't learn some lessons from this," said his lawyer, Bryan Stevenson. "It was too easy for one person to come into court and frame a man for a murder he didn't commit. It was too easy for the state to convict someone for that crime and then have him sentenced to death. And it was too hard in light of the evidence of his innocence to show this court that he should never have been here in the first place."

Mr. McMillian's case, which was given national attention last fall on the CBS News program "60 Minutes," played out in Monroeville, Ala., best known as the home of the Harper Lee, whose "To Kill a Mockingbird," told a painful story of race and justice in the small-town Jim Crow South. To many of his defenders, Mr. McMillian's conviction for the killing seemed like an updated version of the book, in which a black man was accused of raping a white woman. There were no immediate suspects after Ronda Morrison was murdered on the morning of Nov. 1, 1986, in a dry cleaning store. Eight months later the police, arrested Ralph Myers, a 30-year-old with a long criminal record, in connection with another killing in nearby Escambia County. After a week of interrogation by the police, Mr. Myers accused Mr. McMillian, a pulpwood worker, as Ms. Morrison's killer.

Mr. McMillian was arrested, and in an extraordinary move, was immediately sent to Alabama's Death Row, in Holman State Prison, Atmore, which is usually reserved for convicted murderers awaiting execution. Judge Key, for two decades the local circuit court judge, moved the trial from Monroe County, which is 40 percent black, to Baldwin County, which is only 13 percent black. Mr. McMillian was convicted after a one-and-a-half-day trial on the testimony of three witnesses.

Testimony at Trial

Mr. Myers testified that Mr. McMillian asked him for a ride to the cleaning store. There, Mr. Myers said, he witnessed the murder. Another criminal suspect testified that he saw Mr. McMillian's "low rider" truck near the cleaner's, and a third man implicated Mr. McMillian. Mr. McMillian's lawyer called a dozen witnesses, who all testified he was at home the day of the murder taking part in a fish fry. But despite that testimony and the lack of physical evidence, he was found guilty. Judge Key, citing the "vicious and brutal killing of a young lady in the first full flower of adulthood" changed the life sentence to death, as allowed under Alabama law.

Mr. McMillian, who had two jobs and no criminal record other than a misdemeanor charge stemming a barroom fight, did not have a history of violence, but he was well known in town for something else. Mr. McMillian, who is married with three children from his current marriage and has nine children altogether, was dating a white woman named Karen Kelly. And one of his sons had married a white woman.

Roots of Suspicion

Both Mr. McMillian and his lawyer at the original trial, J. L. Chestnut, contended that Mr. McMillian's relationships along had made him a suspect. "The only reason I'm here is because I had been messing around with a white lady and my son married a white lady," he said last week in a prison interview. Whatever the reason, inquiries by Mr. Stevenson and by Alabama Bureau of Investigation agents have since discredited every element of the prosecutions case. All three prosecution witnesses have recanted their testimony.

Mr. Myers has said that law officers prodded him into accusing Mr. McMillian. What's more, Mr. Stevenson's investigation turned up Mr. Myers's first response to the inquiries by the police about Mr. McMillian, in which he said he had had no knowledge of Mr. McMillian's involvement in the crime. Mr. Stevenson also turned up statements from the time of the trial in which four doctors at a forensic hospital said Mr. Myers told them he was being pressured by law officers to lie about Mr. McMillian. None of that material was turned over to the defense at the time, as required. Finally, the lawyer found that Mr. McMillian's truck was not turned into the low rider identified by his accusers until well after the murder. After turning down four appeals, the Alabama Court of Criminal Appeals threw out Mr. McMillian's conviction last week 5 to 0, leading to today's hearing.

U.S. News & World Report magazine

JUNE 26, 2000

Death by incompetence

By David Gergen

Over a dozen years ago, Walter McMillian was arrested for the murder of a young white woman in his hometown of Monroeville, Ala. McMillian was a 45-year-old self-employed contractor who had no prior felony convictions. He also happened to be black. Numerous witnesses called on his behalf said he had been at home at the time with about 30 to 35 people, raising money for his sister's church. The state put on three witnesses against him. McMillian was convicted, and a judge sentenced him to death. McMillian continued to proclaim his innocence. Two years later, an outside attorney, Bryan Stevenson, took up McMillian's cause and worked doggedly on it for the next four years. He found that the police had concealed exculpatory statements from the state's primary witness against McMillian. After nearly six years on death row, McMillian was set free in 1993.

Had it not been for Bryan Stevenson, McMillian would probably be dead by now, a mere statistic in America's struggle with violent crime. Stevenson is a Harvard-trained lawyer who is devoting his life to a nonprofit organization, the Equal Justice Initiative of Alabama, helping poor people accused of capital crimes. He won a MacArthur grant and devoted his \$250,000 prize money to the organization. Stevenson also happens to be black.

Last week, Stevenson testified before the Senate Judiciary Committee, where the death penalty is now a red-hot issue. "The desire to achieve a capital murder conviction at any cost frequently results in proceedings where a reliable determination of guilt or innocence is not likely," he told the lawmakers. His ability to free McMillian, he believes, is a sign not that the system is working but rather that it is badly out of whack.

It would be morally reassuring to think that the McMillian case was an aberration, a remnant of the Old South. But last week also brought forward a stunning report from a team of researchers at the Columbia Law School that makes plain that what happened in Alabama is happening all over the country.

The Columbia University team, headed by Prof. James Liebman, conducted the first statistical study of appeals in capital cases, examining 4,578 state cases between 1973 and 1995. It found that appeals courts determined that an astonishing 68 percent of the cases had prejudicial errors and should be reversed. The most common errors were egregiously incompetent defense lawyers who missed evidence that would have saved the defendant or police and prosecutors who discovered evidence that would have helped the defendant but suppressed it. "Our 23 years' worth of results reveal a death-penalty system collapsing under the weight of its own mistakes," the Columbia team concluded.

5-1-2

When the Supreme Court reinstated the death penalty in 1976, executions were rather slow in coming. They are now hitting flood tide. America today is now executing roughly two people a week, and if recent trends continue, we will put more people to death in the first year of the 21st century than in any year since 1951. The only countries that execute more are China, Iran, Saudi Arabia, and Congo.

Bipartisan. The death penalty is no longer an issue that splits along political lines, with conservatives in favor and liberals against. Earlier this year, the Republican governor of Illinois, George Ryan, called a moratorium on executions until a commission could investigate the justice system there and come up with a better way. Recently, the conservative legislature of New Hampshire voted to overturn the death penalty—only to see a female Democratic governor veto their bill.

With the facts staring us in the eye, it would be unconscionable for the nation to continue on its current course. Congress should promptly pass legislation allowing death-row defendants to use DNA tests. The 37 other states that apply the death penalty should follow the lead of Illinois, placing a moratorium on executions until each state can be absolutely certain that it is not taking an innocent life.

Monroeville, Ala., was not just the home of Walter McMillian; it is also the home of the novelist Harper Lee. In her classic work, *To Kill a Mockingbird*, Lee writes of a lawyer, Atticus Finch, who tries valiantly to defend a black man wrongfully accused of rape. The man is killed. As Bryan Stevenson says, all of us reading the novel root for Atticus Finch, but in real life, we act like we don't care if an innocent man dies. We are better than that.

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Prosecutor Joins Defense

The current Monroe County District Attorney, Tommy Chapman, who did not prosecute the original case, joined the defense in seeking to have the charges dismissed. But he contended there was no deliberate effort to frame Mr. McMillian. "It just mushroomed into a horrible mistake," he said in an interview last week. "I don't want to call it that. A horrible incident." He contended that Mr. McMillian's release proved the the system worked. Neither he nor Circuit Court Judge Pamela W. Baschab offered any apology or comment on the case at the 10-minute hearing this morning.

But Mr. Stevenson said the case, coming at a time that the Supreme Court is increasingly cutting off avenues for Federal appeals, was a reminder how flawed the justice system could be. Since the case was resolved in the state courts, Mr. McMillian's case was not affected by recent decisions limiting appellants' access to the Federal courts. Mr. Stevenson, who handles death row cases for the Alabama Capital Representation Resource Center in Montgomery, said only the death sentence had allowed Mr. McMillian to receive adequate representation. And this case was unusual because the state's case proved not flimsy, but nonexistent, he said.

Innocence Is Clear

"The fortunate thing about Mr. McMillian's case is his innocence was demonstrable," he said. "It's clear he had nothing to do with this crime. There are other folks in prison who don't have the money or the resources or the good fortune to have folks come in and help them." He said he would examine possible legal action on Mr. McMillian's behalf.

Mr. McMillian, who appeared in court this morning in a dark three-piece suit instead of the prison whites he has worn for six years, listened impassively as the charges were thrown out, then smiled and hugged his lawyers, Mr. Stevenson and Bernard Harcourt, before being greeted by throngs of family members and well wishers who overflowed the courtroom and waited in the halls. Outside they unfurled a makeshift banner, using his nickname, that read, "Welcome Home Johnnie D. God Never Fails." Mr. McMillian said he had always expected this day to come, but when asked if the decision today restored his faith in the judicial system he said: "No. Not at all." Mr. Stevenson added: "We told the court when we were here a year ago that truth crushed to earth shall rise again. It doesn't necessarily mean we believe in the judicial system."

STATEMENT OF WALTER McMILLIAN
TO THE
UNITED STATES SENATE
JUDICIARY COMMITTEE

APRIL 1, 1993

A-228

My name is Walter McMillian. I was sentenced to die in the electric chair and spent nearly six years on Death Row in Alabama awaiting execution for a murder that I did not commit, a murder that I knew nothing about, a murder that I had nothing to do with. Today, the State of Alabama has acknowledged that I am an innocent man and that I was wrongfully convicted. What happened to me could have happened to you, or to anyone else. I was convicted and sentenced to death on the false testimony of one man. I am here today to urge you to do all that is in your power to prevent what happened to me from happening to anyone else.

I am now 51 years old. When I was arrested, back in June 1987, I had my own pulp-wood business. Pulp-wood is big in Monroe County, Alabama, in fact it may be the leading industry in the region, and what it involves is cutting down the pine trees and getting the wood to the paper mills. I had worked hard all my life. I had dropped out of school when I was a young boy and started working for my mother when I was only ten years old, plowing fields. As a young man, I had worked for a logging company, running a saw. In the early 1960's, when I was about twenty, I started my own pulp-wood business — by agreement, I would chop your pine trees down, cut them up and haul them to a wood yard, so that they could be shipped to paper mills. Gradually, I came to own a couple of pulp-wood trucks, power-saws, and a tractor. Along with my crew of three to four men, we would cut any man's pine, regardless of the terrain.

I also raised three beautiful children -- Jackie, Johnny, and James -- with my wife, Mini. Jackie now lives up in Huntsville, and works for the State of Alabama. My two sons are still in Monroeville, and one of my sons, Johnny, has three beautiful children of his own. My uncles and aunts, my sisters and nephews and nieces, and of course my grandchildren, all lived near my family in Monroeville and shared with us many wonderful moments of celebration and happiness. We had a big family and many friends and lived our lives in a close community.

That's what we were doing on the morning of November 1, 1986 -- the morning that a young white lady, that I did not know, was tragically murdered at the Jackson Cleaners in Monroeville. At the time she was murdered, I was helping out at a fish-fry that my sister, Evelyne Smith, had organized to raise money for her Church. A fish-fry is where you all get together and fry fish and sell the fish to raise money for your Church. My sister Evelyne was the minister of her Church. This fish-fry was taking place at my house, which is several miles outside of Monroeville in a rural area near Repton, Alabama. That morning, I was also helping my friend, Jimmy Hunter, a mechanic, who was working on my pick-up truck in my back yard. The transmission of my truck had been leaking, so Jimmy and I took the transmission out and we put in a new seal.

I learned about the tragic murder of that young lady, Ronda Morrison, when someone came by my house and told Jimmy Hunter and me that she had been killed earlier that morning in downtown Monroeville. We were all so upset about crime in our community. It was a shock for all of us. Six months went by and I did not hear much

about the tragic incident at the Cleaners. I had heard that there was big reward money, something like \$15,000, for information leading to the arrest of the person that committed that crime. But that's about all I heard until June 7, 1986, the day I was arrested.

That was a Sunday. It was about 11:00 a.m. in the morning, and I was driving my truck down Route 84, a straight shot to my house, when all of a sudden I was surrounded by the police. There were cars of every type -- State Troopers, city cars, the Sheriff and his deputies. They were everywhere, all behind me, on the side, and they stopped me right in the middle of the road. They jumped out with all kinds of guns, rifles, pistols, shotguns, and shoved me up against my truck. They yelled at me to put my hands over my head, not to ask any questions and not to look back.

This had never happened to me before and it was extremely terrifying. I don't know whether you've ever looked straight into the barrel of a shotgun, a rifle or a pistol, but I can tell you, it is a very frightening experience. Particularly when you are a black man in Southern Alabama. They told me to shut up and not say anything or else they would blow my brains out. I kept on asking "why are you doing me like this, what's going on?" And all they would tell me is that I was charged with sodomy. I asked them what that meant. And someone responded in a loud angry voice -- and in vulgar terms -- that I had sexually assaulted a man. I didn't even know what sodomy meant, and to this day I cannot understand why they arrested me on that charge. They never told me where, when or how I had committed this crime. It was simply a way to make me seem really

evil and dangerous and a way to get my truck. The charge was later dismissed by the Court because there was no factual basis.

They put me in a State Trooper car and took me to jail. They took my truck to the station and kept it there. At the station, a jailhouse snitch named Bill Hooks examined my truck and later testified at trial that he had seen my low-rider near the Cleaners on the morning of the crime. A low-rider truck is a pick-up truck that has been altered to ride low to the ground. But I had only had my truck converted to a low-rider five months *after* the incident at the Cleaners, in May 1987. Because I had my truck converted to a low-rider *after* this murder, there was no way that anyone could have seen my low-rider truck near the Cleaners on November 1, 1986, the day that young girl was murdered.

Within a couple of weeks, I was transferred to Death Row at Holman Prison in Atmore, Alabama -- a State correctional facility. There, on Death Row, I awaited my trial for about one year. No one on Death Row, no one at the prison, no attorney I have ever spoken with -- *no one* has ever heard of a capital defendant being placed on Death Row prior to trial and prior to being sentenced to death in Alabama. The reason is that the confinement on Death Row is the most restrictive confinement in the entire State and is not suited to a person that needs to communicate frequently with his lawyers and prepare for trial. To this day, I do not know why I was placed on Death Row one year before my trial.

orientation, a death row prisoner's manual, placed in a death row cell and subjected to all restrictions and treatment received by every death row prisoner in Alabama although he had not been tried or convicted of any offense.²

A. The Trial

When I reviewed Mr. McMillian's trial record, I was immediately struck by the perfunctory nature of the trial court proceedings. Mr. McMillian received a two-day capital murder trial. The trial began at 1:15 p.m. on Monday, August 15, 1988 and was complete by 1:52 p.m. on Wednesday, August 17. The penalty phase of Mr. McMillian's trial was conducted in less than two hours. Jury selection, which in many jurisdictions takes days and can in serious or complex cases take weeks, began at 9:00 in the morning on the 15th of August and was complete by noon.

I was also startled by the nature of the evidence against Mr. McMillian. Ronda Morrison was killed at a dry cleaning store located in the center of Monroeville, Alabama, a small rural community in South Alabama on a Saturday morning in broad daylight. Mr. McMillian was not charged with this offense until over six months after the crime. At Mr. McMillian's trial the state advanced no credible motive for the crime and presented no physical or forensic evidence linking Mr. McMillian to the murder. The

²There are clear restrictions against confining pre-trial detainees and state prisoners in the same areas. Even assuming that it was proper to put a detainee in a state prison, there are over a thousand general population inmates at Holman State Prison who are not under sentence of death. Administrative segregation and a host of other options would have afforded Mr. McMillian detention in a less abusive environment than death row.

state's case against Mr. McMillian turned entirely on the testimony of a white alleged accomplice named Ralph Myers, a career criminal who had several prior felony convictions and another capital murder case pending against him at the time.³

The state also presented testimony from two additional witnesses. Bill Hooks testified that he drove past the cleaners on the morning that Ronda Morrison was murdered and saw Mr. McMillian's truck parked outside the cleaners. Although Ralph Myers had testified that the truck was some fifty yards away from the cleaners in another parking lot, Hooks' testimony was presented by the state as corroborative evidence. Hooks gave his statement to the police while he was in jail on a burglary charge. Immediately after giving this statement to the police, he was released from jail, had fines that he owed the City of Monroeville dismissed at the request of the District Attorney and law enforcement officials, and he was permitted to avoid payment of fines on subsequent traffic offenses. Hooks was given money by the Sheriff before his

³At trial Mr. Myers testified that he was *unknowingly and unwillingly* made a part of a capital murder and robbery on November 1, 1986 when Walter McMillian saw him that Saturday morning at a car wash and asked Myers to drive McMillian's truck because his "arm hurt." Upon this somewhat implausible premise, Mr. Myers gave the only evidence at trial which implicated Walter McMillian in this crime.

Myers stated that he drove Mr. McMillian to Jackson Cleaners, subsequently went into the cleaners and saw McMillian with a gun, placing money in a brown bag. Another man, who was white, was also present in the cleaners. Myers testified this man had black-gray hair and allegedly talked to McMillian. Myers was allegedly shoved and threatened by McMillian when he was seen inside the cleaner. The mysterious third person, who is circumstantially presumed to be in charge, allegedly instructs McMillian to get rid of Myers, which McMillian can't do because he is out of something. The mysterious accomplice is never identified or arrested.

testimony and ultimately was paid \$5000 in reward money.⁴

A week before Mr. McMillian's trial, another alleged witness, a white man named Joe Hightower, came forward and stated that he also saw Mr. McMillian's truck in front of the cleaners. Mr. Hightower received at least \$2000 in reward money. Both men testified at trial that they knew the truck belonged to Mr. McMillian because it was a "low-rider" or that it had been modified to sit close to the ground. While Mr. McMillian owned a low-rider truck at the time of his arrest, his truck was not modified until May of 1987. At the time of the crime in November 1986, his truck was not a low-rider.

On the morning of the crime, Mr. McMillian was at home working on his truck. He and a friend had completely removed his transmission and worked on the truck all morning and until early afternoon. His sister, Evelene Smith, had also organized a fish-fry, an event where fish and other fried foods were sold to people driving by Mr. McMillian's home to raise money for her church. Several people who were assisting in the fish-fry, people who stopped by Mr. McMillian's home to buy fish, and the man who assisted Mr. McMillian in working on his truck all testified that there was no way he could have been involved in the murder of Ronda Morrison on November 1, 1986.

⁴Immediately after Mr. McMillian's trial, a witness by the name of Darnell Houston came forward and told the judge and the prosecutor that Bill Hooks was lying against Mr. McMillian. Mr. Houston explained that he worked with Bill Hooks on the day that Ronda Morrison was murdered and that Bill Hooks never drove into town where he could have seen the crime take place. Mr. Houston testified at a motion for new trial that Hooks could not have seen Mr. McMillian's truck. The trial judge ignored this man's testimony and refused to overturn Mr. McMillian's conviction. Moreover, the sheriff and prosecutor retaliated against this witness for coming forward by indicting him for perjury. The charges were later dismissed.

I was quite surprised that the trial jury convicted Mr. McMillian on the testimony presented by the State. The testimony of over a half-dozen black witnesses who testified that Mr. McMillian was at home working on his truck was simply ignored. The testimony of Ralph Myers, who is white, was apparently given more credibility despite the fact that Myers had a lengthy criminal record, his testimony was implausible and despite the many incentives Myers had for lying to help himself.

Race clearly played a role in jury selection and review of the evidence. While the crime took place in Monroe County which has an African-American population of over 40 percent, venue was changed to Baldwin County, Alabama, which has a black population of less than fifteen percent. Only one African-American served on Mr. McMillian's jury after the State excluded other black potential jurors through peremptory strikes. The District Attorney also improperly told the jury that Mr. McMillian was rumored to have had an affair with a young white woman. The introduction of this evidence had no purpose or relation to this case other than inflaming racial prejudice against Mr. McMillian.

Despite the extremely weak and contradictory evidence against Mr. McMillian, the Alabama Court of Criminal Appeals concluded on appeal that there was sufficient evidence to affirm Mr. McMillian's conviction and death sentence. McMillian v. State, 570 So.2d 1285 (Ala.Cr.App. 1990). Even after evidence was presented that established that witnesses testifying against Mr. McMillian had received reward money and other favors from the State, Mr. McMillian's conviction and death sentence were affirmed by the

Alabama Court of Criminal Appeals. McMillian v. State, 594 So.2d 1253 (Ala.Cr.App. 1991).

B. The Investigation

Throughout my representation of Mr. McMillian we continued to investigate his case and we constantly found evidence to support his innocence. We were able to confirm that Mr. McMillian's truck was not a low-rider in November of 1986; we gathered evidence which showed that Ralph Myers did not even know who Mr. McMillian was in March of 1987, some four months after they allegedly committed this crime together; we discovered that the State arranged for Bill Hooks to be removed from jail so that he could inspect Mr. McMillian's truck before Hooks gave a written statement stating he saw Mr. McMillian's truck at the crime scene; we also found evidence which proved that law enforcement officials knowingly concealed information which would have helped establish Mr. McMillian's innocence prior to trial.

In August of 1991, we were contacted by the State's witness Ralph Myers. Mr. Myers told us that his trial testimony against Mr. McMillian was false. Mr. Myers told us that he was pressured by law enforcement officers to testify falsely against Mr. McMillian. Mr. Myers' admission that he testified falsely against Mr. McMillian opened up additional avenues of investigation that also produced evidence of law enforcement misconduct and abuse. For example, we discovered that a month prior to Mr. McMillian's trial, Myers told several state doctors in a court ordered pre-trial evaluation that he was about

to frame an innocent man for murder. Myers told the doctors that he had no knowledge of Mr. McMillian being involved in the murder of Ronda Morrison and that he was being pressured to testify falsely to help the state with its case. Myers gave statements to at least four state doctors that revealed that his testimony against Walter McMillian was false. The reports from these doctors were sent to the prosecutor and to the Circuit Court judge shortly before Mr. McMillian's trial but never disclosed to the defense or the jury.

We also uncovered other statements Myers made directly to law enforcement officials where Myers made it clear that he had no knowledge of Mr. McMillian's involvement in this offense and that any assertion to the contrary would be a lie.⁵ These statements, made even before Mr. McMillian's arrest, were concealed from the defense and the jury. In fact, at Mr. McMillian's trial the prosecutor told the jury that Myers' accusations against Mr. McMillian were credible and believable because Myers consistently told everything he knew to the police from the very beginning. The prosecutor told the jury that Myers' testimony was reliable because he told the same story of Mr. McMillian's involvement in the murder from his arrest until trial. In fact, Myers gave at least three other recorded interviews where he emphatically denied that

⁵The concealed statements also supported Myers' assertion that he was pressured to testify falsely. The recorded interviews between Myers and law enforcement agents reveal that the State was pressuring Myers very heavily to alter his initial statements. One agent told Myers that if he continued to say he didn't know anything he would "burn" and get the electric chair. Myers was repeatedly told by agents that he was going to "lose", "end up in the electric chair" and never get out of jail unless he changed his testimony.

Mr. McMillian was involved in the Morrison murder.

We also discovered that the state had within its possession witness statements from other inmates to whom Myers had told that he was going to frame Mr. McMillian for a murder he did not commit. These statements were also withheld from the defense by state investigators. Additional evidence which clearly established that Mr. Myers' trial testimony was false was also withheld by law enforcement agents and state prosecutors.*

In May of 1992, we presented all of the evidence we uncovered before a Circuit Court Judge in Baldwin County, Alabama, including testimony from Ralph Myers who admitted that his trial testimony was false. Despite all of this evidence, the Court ruled against us and held that Mr. McMillian was not entitled to relief or a new trial. It was the fifth time since Mr. McMillian's capital murder conviction and death sentence had

*At trial the State argued that Ronda Morrison was killed in a twenty-five to thirty minute period between 10:10 or 10:15 and 10:40 or 10:45. The State presented evidence that Myers drove Mr. McMillian to the cleaners and Mr. McMillian went in the cleaners twice. Myers then left for ten minutes to get cigarettes. Myers returns and Mr. McMillian comes out of the cleaners and returns into the cleaners again where shots are then heard. Myers goes inside the building. Myers is allegedly threatened by Mr. McMillian and forced out of the building. The victim's body is moved and McMillian allegedly leaves and Myers drives him away. The state told the jury and the trial judge that this account of what happened was not impossible because there were 25-30 minutes for the crime to take place.

It is now clear that the state was aware that Miles Jackson, the former owner of the cleaners, was at the cleaners at 10:30 in the morning on the day Ronda Morrison was murdered and that at 10:30 Ms. Morrison was alone and fine. A report prepared by the Alabama Bureau of Investigation (ABI) in October of 1987 confirmed Mr. Jackson's presence at the cleaners. The testimony of Myers at trial was completely discredited by the ABI report and Jackson's presence and the statement that Ms. Morrison was alone and fine at 10:30 on the morning of the murder. This information however was unlawfully concealed from the defense and the jury.

been imposed in 1988 that an Alabama state court had refused to grant Mr. McMillian relief or a new trial after legal challenges or newly discovered evidence had been presented. Although it is axiomatic that the State has an obligation under the Constitution to disclose any exculpatory material or favorable evidence to the defense prior to trial,⁷ the State refused to concede error concerning the numerous and uncontradicted ways in which it had unlawfully withheld evidence from Mr. McMillian.

It took an additional nine months of litigation before we finally convinced the Alabama Court of Criminal Appeals to overturn Mr. McMillian's capital murder conviction and sentence of death. During the year and a half following Myers' admission that his testimony was false and the discovery of the State's unlawful concealment of exculpatory evidence, the State vigorously opposed our efforts to achieve Mr. McMillian's release. Even after the state's only other witnesses, Bill Hooks and Joe Hightower, both admitted to state investigators in December of 1992 that their trial testimony against McMillian was false, the state still refused to acknowledge Mr. McMillian's innocence. At no point prior to the reversal of Mr. McMillian's capital murder conviction did the State concede that Mr. McMillian's rights had been violated or that he was entitled to relief.

It was only after we filed a motion to dismiss all charges on March 2 of this year that the State finally acknowledged Mr. McMillian's innocence and joined us in seeking dismissal of the charges against him. The ease with which Mr. McMillian was convicted of capital murder and sentenced to death for a crime he did not commit, contrasted

⁷See Brady v. Maryland, 373 U.S. 83 (1963); Ex parte Monk, 557 So.2d 832 (Ala. 1989).

with the enormous difficulties we encountered in establishing his innocence and achieving his release, say much about the criminal justice system and innocence and the death penalty. That it took four and a half years of litigation with thousands of hours of investigation to free Mr. McMillian after wrongly convicting him in two days shows us that there are disturbing problems which must be corrected within our criminal justice system.

C. Reform and New Legislation is Needed

In light of this Committee's consideration of legislation that would empower federal courts to prevent the execution of innocent death row prisoners, it is particularly important that we recognize how Mr. McMillian's case and others like it undermine the integrity of the criminal justice system and public confidence. The United States Supreme Court's decision in Herrera v. Collins earlier this term was a tremendous blow to us as we attempted to secure Mr. McMillian's freedom. Often times the kind of work and investigation necessary to prove a death row prisoner's innocence cannot be accomplished until a case reaches federal court.

Although Mr. McMillian obtained relief in state court, my staff and I devoted thousands of hours to this case during the years we represented Mr. McMillian. None of this work was compensated by the State of Alabama. The Alabama Resource Center has never received any funding from the State of Alabama to assist death row prisoners in Alabama state courts like Walter McMillian. Without private donations from foundations, churches and individuals to the Resource Center for non-federal work,

which is increasingly difficult to secure, our efforts on behalf of Mr. McMillian in state court would not have been possible. With 124 people under sentence of death in Alabama and a \$600 cap on compensation for appointed state postconviction work, it is simply impossible for many death row prisoners to obtain the legal assistance needed to uncover all the evidence necessary to establish their innocence.*

It is also important to recognize that Alabama state courts refused to conclude that Mr. McMillian had been convicted on false evidence or that he was innocent even after all of the evidence was uncovered. The Court of Criminal Appeals refused to overturn the judgment of the trial judge in Baldwin County -- who must stand for election every six years -- that there was insufficient evidence of perjured testimony or actual innocence. McMillian v. State, 616 So.2d 933 (Ala.Cr.App. 1993). It should also be noted that even after evidentiary hearings in state courts, new evidence continued to unfold in Mr. McMillian's case when the State's two remaining witnesses Hooks and Hightower recanted their trial testimony. If Mr. McMillian had not won a new trial based on the State's failure to disclose favorable evidence before trial, Mr. McMillian's only forum for presenting this new evidence of innocence would have been in federal court. However, the presentation of this evidence in federal court after Herrera would have been meaningless since it "only" proved Mr. McMillian's innocence, not that his trial was otherwise unconstitutional.

* In Mr. McMillian's case, the State even opposed my request for appointment so that we could get the \$600.00 of compensation the statute allows. The Baldwin County Circuit Judge to whom we applied for appointment never granted our motion.

Further, it must be noted that even with the extremely restrictive possibilities for relief in state courts in Alabama, efforts are constantly being made to make the execution of the innocent even easier. For example, for the last several years legislation has been successfully approved by state legislative committees that would eliminate the Court of Criminal Appeals from review of all capital cases in order to facilitate executions more expeditiously.

There is tremendous enthusiasm for the death penalty in Alabama and across this country. The excited efforts by many prosecutors and law enforcement agents to achieve capital murder convictions and death sentences have caused many in the criminal justice system to accept general fear and frustration about violent crime as a substitute for specific evidence of guilt in some cases. This condition is exacerbated by the appalling shortcomings of indigent defense systems and the quality of representation available to poor people accused of capital crimes. Alabama has no public defender system and relies on appointed private counsel for most capital trials. Compensation for this kind of legal assistance is extremely limited. Lawyers cannot receive more than \$1000 for the work they do out of court preparing a capital murder case for trial. This presents an enormous obstacle to thorough investigation and preparation in many capital cases and results in unreliability concerning the correctness of many convictions and death sentences.* The risk of wrongful execution is distress-

* For a review of the problems with Alabama's indigent defense system see Friedman and Stevenson, "Solving Alabama's Capital Defense Problems: It's a Dollars and Sense Thing," 44 Ala.L.Rev. 1 (Fall 1992).

ingly high.

We must make sure that local bias, prejudice and anger about violent crime does not result in innocent people being wrongfully convicted, sentenced and executed. At the outset of my representation of Mr. McMillian I never imagined that proving his innocence in this case would be as difficult, time consuming and arduous as it was. It frightens me to think that as I continue to provide legal assistance to death row prisoners without federal legislation to modify the U.S. Supreme Court's decision in Herrera, it will only be more difficult next time.

Bryan A. Stevenson
Montgomery, Alabama

**DISPOSITION OF POTENTIAL FEDERAL CAPITAL CASES
NOVEMBER 18, 1988 - FEBRUARY 27, 2004**

Federal capital prosecutions awaiting or in trial. App. at 30	67
Federal capital defendants who died before or during trial. App. at 38	3
Federal capital prosecutions which were dismissed by the judge for legal reasons. App. at 39	14
Federal capital cases in which the Attorney General withdrew a notice of intent to seek the death penalty. App. at 41	29
Federal capital prosecutions ending in guilty pleas to a sentence other than death. App. at 44	86
Federal capital defendants who were found not guilty of the capital charge or were innocent. App. at 54	12
Federal capital defendants convicted of a lesser offense. App. at 56	2
Federal capital cases where the death penalty has been rejected by juries or judges. App. at 57	64
Federal capital cases resulting in a sentence of death. App. at 65	28
Federal capital cases resulting in an execution. App. at 69	3
Former federal death row inmates. App. at 70	8

washingtonpost.com

Review Ordered on McVeigh Ties

Associated Press

Saturday, February 28, 2004; Page A22

The FBI ordered a formal review yesterday of some aspects of the 1995 Oklahoma City bombing investigation, reopening the question of whether Timothy J. McVeigh may have had more accomplices in the worst domestic terrorist attack in U.S. history.

The FBI ordered agents to determine why some documents reached neither the bureau's Oklahoma City task force during the original investigation nor McVeigh's lawyers before he was executed in 2001, officials said.

The review of evidence and documents will also try to determine whether FBI agents in a separate investigation of white supremacist bank robbers may have failed to alert the Oklahoma City investigation of a possible link between the robbers and McVeigh, and allowed some of that evidence to be destroyed.

The Associated Press reported Wednesday that documents never introduced at McVeigh's trial indicated that FBI agents destroyed evidence and failed to share other information that raised the possibility that a gang of white supremacist bank robbers may have assisted McVeigh.

The evidence includes documents showing that the Aryan Republican Army bank robbers possessed explosive blasting caps similar to those McVeigh stole and a driver's license with the name of a central player who was robbed in the Oklahoma City plot.

The documents do not prove that additional accomplices were involved -- blasting caps are plentiful, and the gang was expert in document fraud. But the FBI agent who ran the Oklahoma City investigation, Dan Defenbaugh, said his team never had a chance to investigate the evidence. He called for the probe to be reopened.

The April 19, 1995, bombing killed more than 160 people, and McVeigh was put to death for it in 2001. His co-defendant, Terry Nichols, will stand trial in Oklahoma next week on state charges that could carry the death penalty.

Nichols's attorneys asked on Thursday for the trial to be delayed in light of the AP story, but the judge refused.

FBI officials and Nichols's attorneys declined to comment last night, citing a gag order in the case.

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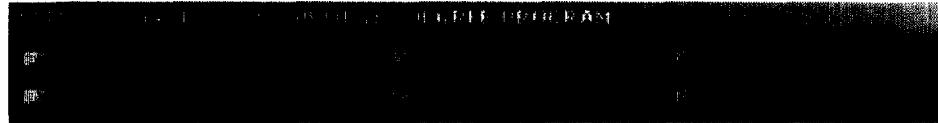
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**Local/Region****Flemmi gets additional life sentence for jai alai owner murder**

AP

02/28/2004

MIAMI (AP) -- Convicted mobster Stephen "The Rifleman" Flemmi has been sentenced to life in prison on his guilty plea to the 1982 killing of World Jai Alai executive John Callahan, whose body was found in the trunk of a car.

Flemmi, 69, entered the plea on Thursday before Circuit Judge Scott Silverman in Miami and was sentenced to concurrent terms of life without parole, plus 30 years.

Flemmi has been jailed since 1995 and was sentenced to life in January for his role in 10 other murders. He is awaiting sentencing in Oklahoma on another murder charge involving World Jai Alai.

Flemmi and FBI informant James "Whitey" Bulger were leaders of the Winter Hill Gang, a group that ran loan-sharking, drug and gambling rackets in the Boston area and were part of a long-running scandal over the relationship between the Boston FBI and its underworld informants.

Flemmi struck a plea deal with prosecutors after fingering his former FBI handler, H. Paul Rico, for allegedly helping to set up the 1981 murder in Tulsa, Okla., of World Jai Alai owner Roger Wheeler.

Rico, 78, who retired from the FBI in 1975 and became security boss of World Jai Alai, was arrested in October in Miami and brought to Oklahoma to face a first-degree murder charge. But Rico, who had a heart condition, died earlier this month at a Tulsa hospital.

Federal prosecutors have called the Bulger-Flemmi reign "one of the darkest chapters in the history of law enforcement."

Investigators still believe Flemmi may provide them with information that could lead to additional indictments, possibly against other FBI agents or police officers who may have steered the gang toward informants who were assisting law enforcement officials.

Callahan's decomposing body was found in the trunk of a Cadillac parked in a long-term parking garage at Miami International Airport.

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